

# **EXHIBIT 68**

December 15, 2022

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NORTH DAKOTA  
WESTERN DIVISION

Civil Action No. 19-cv-150-DMT-ARS

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RULE 30(b)(6) VIDEOTAPED DEPOSITION OF:  
PATRICK WYNTERS "WYN" HORNBUCKLE -  
U.S. DEPARTMENT OF JUSTICE, MAIN JUSTICE  
December 15, 2022  
Via RemoteDepo™

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STATE OF NORTH DAKOTA,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

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PURSUANT TO NOTICE AND AGREEMENT, the Rule 30(b)(6) videotaped deposition of PATRICK WYNTERS "WYN" HORNBUCKLE, U.S. DEPARTMENT OF JUSTICE, MAIN JUSTICE, was taken on behalf of the Plaintiff in Washington, D.C., by remote means on December 15, 2022, at 8:59 a.m. Mountain Standard Time, before Tracy C. Masuga, Registered Professional Reporter and Certified Realtime Reporter, appearing remotely from Denver County, Colorado.

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<p style="text-align: right;">Page 2</p> <p>1 REMOTE APPEARANCES</p> <p>2 For the Plaintiff:</p> <p>3 PAUL B. KERLIN, ESQ.</p> <p>4 Greenberg Traurig LLP</p> <p>5 1000 Louisiana Street</p> <p>6 Suite 6700</p> <p>7 Houston, Texas 77002</p> <p>8 kerlinp@gtlaw.com</p> <p>9</p> <p>10 PAUL M. SEBY, ESQ.</p> <p>11 Greenberg Traurig LLP</p> <p>12 1144 15th Street</p> <p>13 Suite 3300</p> <p>14 Denver, Colorado 80202</p> <p>15 sebyp@gtlaw.com</p> <p>16</p> <p>17 For the Defendant:</p> <p>18 JANE E. BOBET, ESQ.</p> <p>19 TIMOTHY B. JAFEK, ESQ.</p> <p>20 VICTOR WILLIAM SCARPATO III, ESQ.</p> <p>21 Department of Justice</p> <p>22 U.S. Attorney's Office</p> <p>23 District of Colorado</p> <p>24 1800 California Street</p> <p>25 Suite 1600</p> <p>Denver, Colorado 80202</p> <p>jane.bobet@usdoj.gov</p> <p>timothy.jafek@usdoj.gov</p> <p>victor.scarpato@usdoj.gov</p> <p>ERICA M. ZILIOI, ESQ.</p> <p>U.S. Attorney's Office</p> <p>District of Colorado</p> <p>1801 California Street</p> <p>Suite 1600</p> <p>Denver, Colorado 80202</p> <p>erica.m.zilioli@usace.army.mil</p> <p>Also Present:</p> <p>Michael Banks, Videographer</p> <p>Rachel Hymel</p> <p>Corin Stigall</p>	<p style="text-align: right;">Page 4</p> <p>1 Exhibit 855 Email to Hirsch, et al., from 77</p> <p>2 Hornbuckle, 9/9/16, Subject: RE:</p> <p>3 Judge Boasberg's Order/Opinion and</p> <p>4 Joint Army/Interior/Justice</p> <p>5 Statement; with attached emails;</p> <p>6 MYERS_00010033 - MYERS_00010035</p> <p>7</p> <p>8 Exhibit 856 Email to Diver, et al., from 80</p> <p>9 Hornbuckle, 9/9/16, Subject: RE:</p> <p>10 Judge Boasberg's Order/Opinion and</p> <p>11 Joint Army/Interior/Justice</p> <p>12 Statement; with attached emails;</p> <p>13 MYERS_00010036 - MYERS_00010037</p> <p>14</p> <p>15 Exhibit 857 Email to Wray from Hornbuckle, 81</p> <p>16 9/9/16, Subject: RE: Standing</p> <p>17 Rock - Possible state press</p> <p>18 conference at 11:30 central; with</p> <p>19 attached emails; MYERS_00045235 -</p> <p>20 MYERS_00045238</p> <p>21</p> <p>22 Exhibit 858 Email to Hackworth, et al., from 84</p> <p>23 Hornbuckle, 9/12/16, Subject: RE:</p> <p>24 Standing Rock - Possible state</p> <p>25 press conference at 11:30 central;</p> <p>with attachments; with attached</p> <p>emails; MYERS_00044231 -</p> <p>MYERS_00044249</p> <p>Exhibit 859 Email to Ames, et al., from 89</p> <p>Williamson, 9/12/16, Subject: RE:</p> <p>DAPL Daily Update Security</p> <p>9 Sep 16 (UNCLASSIFIED); with</p> <p>attached emails; USACE_00084181 -</p> <p>USACE_00084182</p> <p>Exhibit 860 Email to Keller from Kirchmeier, 96</p> <p>12/14/16, Subject: Re: URGENT</p> <p>Associated Press inquiry from</p> <p>Blake; with attached emails;</p> <p>ND_000256324 - ND_000256329</p>
<p style="text-align: right;">Page 3</p> <p>1 I N D E X</p> <p>2 EXAMINATION OF PATRICK WYNTERS "WYN" HORNBUCKLE: PAGE</p> <p>3 December 15, 2022</p> <p>4 By Mr. Kerlin 8, 103</p> <p>5 By Ms. Bobet 101</p> <p>6 DEPOSITION EXHIBITS: INITIAL</p> <p>7 (Exhibits provided electronically to the reporter.) REFERENCE</p> <p>8 Exhibit 850 Email to Hirsch, et al., from 47</p> <p>9 Hornbuckle, 9/6/16, Subject:</p> <p>10 [Non-DoD Source] ABC Caution-news:</p> <p>11 Judge Grants Partial Stop on North</p> <p>12 Dakota Pipeline Work;</p> <p>13 ARMY_00028388 - ARMY_00028389</p> <p>14</p> <p>15 Exhibit 851 Telephone Conference Invite from 52</p> <p>16 Hackworth to Hornbuckle, et al.,</p> <p>17 9/7/16, Subject: Standing Rock</p> <p>18 Touch Base; MYERS_00010012</p> <p>19</p> <p>20 Exhibit 852 Email to Hackworth, et al., from 54</p> <p>21 Hornbuckle, 9/7/16, Subject: RE:</p> <p>22 Standing Rock - Cell Phone</p> <p>23 Numbers; with attached emails;</p> <p>24 MYERS_00043796 - MYERS_00043797</p> <p>25</p> <p>26 Exhibit 853 Email to Hirsch and Tompkins from 56</p> <p>27 Hornbuckle, 9/9/16, Subject:</p> <p>28 [Non-DoD Source] RE: FINAL Drafts</p> <p>29 of Statements; with attached</p> <p>30 emails (Redacted); ARMY_00117974-</p> <p>31 ARMY_00117977</p> <p>32</p> <p>33 Exhibit 854 Email to Hirsch and Tompkins from 73</p> <p>34 Hornbuckle, 9/9/16, Subject:</p> <p>35 [Non-DoD Source] RE: FINAL Drafts</p> <p>of Statements; with attached</p> <p>emails (Redacted); ARMY_00117979-</p> <p>ARMY_00117982</p>	<p style="text-align: right;">Page 5</p> <p>1 DEPOSITION EXHIBITS: (Previously marked)</p> <p>2 Exhibit 494 Email to SRJ2@ios.doi.gov from 59</p> <p>3 U.S. Department of the Interior;</p> <p>4 9/9/16, Subject: Joint Statement</p> <p>5 from the Department of Justice,</p> <p>6 the Department of the Army, and</p> <p>7 the Department of the Interior</p> <p>8 regarding Standing Rock Sioux</p> <p>9 Tribe v. U.S. Army Corps of</p> <p>10 Engineers; DOI_00000001 -</p> <p>11 DOI_00000002</p> <p>12</p> <p>13 Exhibit 803 Second Amended Notice of 30(b)(6) 14</p> <p>14 Deposition of The United States of</p> <p>15 America, 11/23/22; with</p> <p>16 attachments</p> <p>17</p> <p>18 Exhibit 821 Joint Statement from Department of 92</p> <p>19 Justice, Department of the Army,</p> <p>20 and the Department of the Interior</p> <p>21 regarding D.C. Circuit Court of</p> <p>22 Appeals Decision in Standing Rock</p> <p>23 Sioux Tribe v. U.S. Army Corps of</p> <p>24 Engineers, 10/10/16;</p> <p>25 USACE_00015886</p>

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<p style="text-align: right;">Page 6</p> <p>1 WHEREUPON, the following proceedings</p> <p>2 were taken pursuant to the Federal Rules of Civil</p> <p>3 Procedure.</p> <p>4 * * * * *</p> <p>5 (Deposition Exhibits 850 through 860</p> <p>6 were introduced by Mr. Kerlin and electronically</p> <p>7 provided to the court reporter for marking.)</p> <p>8 THE VIDEOGRAPHER: We are now on the</p> <p>9 record. Participants should be aware that this</p> <p>10 proceeding is being recorded and, as such, all</p> <p>11 conversations held will be recorded unless there is a</p> <p>12 request and agreement to go off the record.</p> <p>13 Private conversations and other</p> <p>14 attorney-client interactions should be held outside</p> <p>15 the presence of the remote interface.</p> <p>16 This is the remote video-recorded</p> <p>17 deposition of Wyn Hornbuckle. Today is Thursday,</p> <p>18 December 15, 2022. The time is now 3:59 p.m. UTC,</p> <p>19 8:59 a.m. Mountain. We are here in the matter of</p> <p>20 State of North Dakota v. United States of America.</p> <p>21 My name is Michael Banks, remote video</p> <p>22 technician on behalf of U.S. Legal Support. I'm not</p> <p>23 related to any party in this action, nor am I</p> <p>24 financially interested in the outcome.</p> <p>25 At this time will the reporter, Tracy</p>	<p style="text-align: right;">Page 8</p> <p>1 PATRICK WYNTERS "WYN" HORNBUCKLE,</p> <p>2 having been first duly sworn to state the whole truth,</p> <p>3 testified as follows:</p> <p>4 EXAMINATION</p> <p>5 BY MR. KERLIN:</p> <p>6 Q. Good morning, Mr. Hornbuckle. Did I</p> <p>7 pronounce that right?</p> <p>8 A. That's correct. Good morning,</p> <p>9 Mr. Kerlin.</p> <p>10 Q. Good morning. I'm -- I'm an attorney</p> <p>11 with the law firm Greenberg Traurig and a Special</p> <p>12 Assistant Attorney General for North Dakota. I, along</p> <p>13 with my colleague Paul Seby, who is also attending</p> <p>14 this deposition, represent the State of North Dakota</p> <p>15 in the action in which this deposition is being taken.</p> <p>16 Today I'll likely refer to my client as</p> <p>17 "North Dakota," just so that you're aware of that.</p> <p>18 Would you state your full name.</p> <p>19 A. My name is Patrick Wynters Hornbuckle.</p> <p>20 Q. Okay. And I'll also note that this</p> <p>21 deposition of Mr. Hornbuckle is taken pursuant to the</p> <p>22 notice that was served on counsel, and agreement of</p> <p>23 the parties.</p> <p>24 Mr. Hornbuckle, where are you currently</p> <p>25 located?</p>
<p style="text-align: right;">Page 7</p> <p>1 Masuga on behalf of U.S. Legal Support, please</p> <p>2 enter the statement for remote proceedings into the</p> <p>3 record.</p> <p>4 THE REPORTER: The attorneys</p> <p>5 participating in this deposition acknowledge that I am</p> <p>6 not physically present in the room and that I will be</p> <p>7 reporting this proceeding remotely.</p> <p>8 They further acknowledge that in lieu of</p> <p>9 an oath administered in person, the witness will</p> <p>10 verbally declare his testimony in this matter is under</p> <p>11 penalty of perjury.</p> <p>12 Counsel, please indicate your agreement</p> <p>13 by stating your name and your agreement on the record.</p> <p>14 MR. KERLIN: This is Paul Kerlin on</p> <p>15 behalf of the plaintiff, North -- the State of North</p> <p>16 Dakota, and we agree.</p> <p>17 MS. BOBET: And this is Jane Bobet on</p> <p>18 behalf of the defendant, The United States of America,</p> <p>19 and we agree.</p> <p>20 THE REPORTER: Mr. Hornbuckle, do you</p> <p>21 solemnly state that the testimony you are about to</p> <p>22 give in the cause now pending will be the truth, the</p> <p>23 whole truth, and nothing but the truth?</p> <p>24 THE DEPONENT: I do.</p> <p>25</p>	<p style="text-align: right;">Page 9</p> <p>1 A. I'm located in Washington, D.C., at the</p> <p>2 Main Justice Department.</p> <p>3 Q. Anybody else in the room with you?</p> <p>4 A. No.</p> <p>5 Q. Okay. Have you been deposed before?</p> <p>6 A. No. This is my first time.</p> <p>7 Q. Okay. I'm -- I'm sure some of this</p> <p>8 you've been over with counsel, but we've agreed to</p> <p>9 take this deposition, and a lot of these depositions</p> <p>10 in this case, remotely. If you have any issues with</p> <p>11 any tech issues -- sometimes we have connectivity</p> <p>12 issues, things of that nature -- just speak up, let us</p> <p>13 know. We can go off the record, try and get that</p> <p>14 resolved, and then get -- get back to it.</p> <p>15 I would ask that you wait until I finish</p> <p>16 asking my question before you give your answer so we</p> <p>17 can try and minimize any talking over each other so</p> <p>18 the court reporter can take everything down.</p> <p>19 I would also ask that you provide verbal</p> <p>20 answers. Sometimes we shake our head or nod our head.</p> <p>21 If I prompt you for an answer, it's simply so that the</p> <p>22 court reporter can get a verbal response and note that</p> <p>23 in the written record, okay?</p> <p>24 A. Okay.</p> <p>25 Q. If at any time you don't understand my</p>

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<p style="text-align: right;">Page 10</p> <p>1 question, please let me know; I'll try and rephrase</p> <p>2 it.</p> <p>3 We'll take a break at any time you need</p> <p>4 to. I would ask that we -- we try and -- I would ask</p> <p>5 that you answer the question pending if there is one,</p> <p>6 and then, you know, of course, we can accommodate any</p> <p>7 need for any breaks that come up, okay?</p> <p>8 A. Okay. Yes.</p> <p>9 Q. Good. You've been -- you've been</p> <p>10 designated as what we refer to as a 30(b)(6) or</p> <p>11 representative witness. Do you understand that?</p> <p>12 A. Yes.</p> <p>13 Q. For the topics on which you've been</p> <p>14 designated, and those in the notice are 6, 10, 13, 15,</p> <p>15 20, and 21. You are the 30(b)(6) representative for</p> <p>16 the Department of Justice, Main Justice, okay? That's</p> <p>17 the way the designation was given to us.</p> <p>18 A. Okay.</p> <p>19 Q. So you understand that when you provide</p> <p>20 testimony with respect to those topics, that you are</p> <p>21 speaking on behalf of the Department of Justice, and</p> <p>22 your answers bind the Department of Justice with</p> <p>23 respect to those topics?</p> <p>24 A. I do.</p> <p>25 Q. Okay. Can you tell me what you did to</p>	<p style="text-align: right;">Page 12</p> <p>1 of collectively.</p> <p>2 A. Sure. So counsel was there in each one</p> <p>3 of these, Jane Bobet from the U.S. Attorney's office.</p> <p>4 There were also folks from the Environment and Natural</p> <p>5 Resources Division, from the Community Relations</p> <p>6 Service, also from the Army Corps of Engineers, the</p> <p>7 Office of Tribal Justice, and -- yep, and that was --</p> <p>8 that's generally the folks who were in these meetings.</p> <p>9 Q. And -- and for the --</p> <p>10 Okay. And just were those all</p> <p>11 attorneys, or were some of them attorneys and some of</p> <p>12 them not?</p> <p>13 A. I believe most were attorneys. I'm not</p> <p>14 an attorney, so -- but there are a lot of attorneys</p> <p>15 here at -- at Justice in most of these positions,</p> <p>16 so . . .</p> <p>17 Q. Sure. You said you also spoke with some</p> <p>18 individuals. Was that separate and apart from the six</p> <p>19 times that you had the -- the meetings over the seven</p> <p>20 and a half hours?</p> <p>21 A. No, just the -- just the individuals in</p> <p>22 the meetings.</p> <p>23 Q. Okay. Can you tell me the names of the</p> <p>24 individual -- I'm sorry. I -- I can't read my notes</p> <p>25 here. You said Community Relations, was that right?</p>
<p style="text-align: right;">Page 11</p> <p>1 prepare for your deposition?</p> <p>2 A. So I -- I reviewed materials; I met with</p> <p>3 individuals in the department; met with counsel; and I</p> <p>4 also looked at some of my own email traffic to -- to</p> <p>5 refresh my memory of these events.</p> <p>6 Q. Okay. I just want to go through those.</p> <p>7 You said you -- you met with counsel. How many times</p> <p>8 did you meet with counsel?</p> <p>9 A. I met six times.</p> <p>10 Q. Remotely or in person?</p> <p>11 A. Remotely.</p> <p>12 Q. Approximately how long for the total</p> <p>13 time of those six?</p> <p>14 A. Approximately seven and a half hours.</p> <p>15 Q. Okay. Just so I'm clear, that's in</p> <p>16 total time?</p> <p>17 A. Correct.</p> <p>18 Q. Okay. And then can you tell me who was</p> <p>19 present?</p> <p>20 A. Yes. At each one, or --</p> <p>21 Q. Yeah. I don't really need to go through</p> <p>22 each six times, but if you can just tell me</p> <p>23 generally --</p> <p>24 A. Correct.</p> <p>25 Q. -- who was in attendance at all, so kind</p>	<p style="text-align: right;">Page 13</p> <p>1 A. Community Relations Service. It's the</p> <p>2 Justice Department arm. So that was Justin Lock;</p> <p>3 Antoinette Barksdale, who's a general counsel; as well</p> <p>4 as Karen Gibbs, also a deputy general counsel.</p> <p>5 Q. Okay. And then the Office of Tribal</p> <p>6 Justice?</p> <p>7 A. Yes. The director of Office of Tribal</p> <p>8 Justice is Tracy Toulou.</p> <p>9 Q. Okay. And -- and it looks like you</p> <p>10 might be reading from something. Do you have some</p> <p>11 documents in front of you?</p> <p>12 A. Just the notes that counsel provided me</p> <p>13 in the binder -- binders that were the materials,</p> <p>14 yeah.</p> <p>15 Q. Okay. And it sounds like, you know, you</p> <p>16 were reading that, so you were -- that forms some of</p> <p>17 the basis of your testimony today so far?</p> <p>18 A. Yes, some of the basis, but I -- I</p> <p>19 participated in all of these meetings. I was also</p> <p>20 involved in all of these events at the time and know</p> <p>21 all of these individuals.</p> <p>22 MR. KERLIN: Okay. We would make a</p> <p>23 request for the notes that Mr. Hornbuckle is reviewing</p> <p>24 that forms the basis of part of his testimony.</p> <p>25 MS. BOBET: No problem.</p>

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<p style="text-align: right;">Page 14</p> <p>1 Q. (BY MR. KERLIN) Okay. Okay. I want to</p> <p>2 pull up the notice. So it's 803, Exhibit 803.</p> <p>3 Mr. Hornbuckle, have you seen this</p> <p>4 document before?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. What I would like to do is get</p> <p>7 right to No. 6. No. 6 is on the next -- there we go,</p> <p>8 bottom of the page. "Public statements made by</p> <p>9 government officials about any applications for DAPL</p> <p>10 Special Use Permits or any decisions made or actions</p> <p>11 taken regarding such applications."</p> <p>12 So for the Department of Justice, can</p> <p>13 you tell me if there were any public statements made</p> <p>14 by the Department of Justice about any applications</p> <p>15 for DAPL special-use permits?</p> <p>16 A. No, there were not.</p> <p>17 Q. Okay. What about the second part of</p> <p>18 that, "any decisions made or actions taken regarding</p> <p>19 such applications." Did the Department of Justice</p> <p>20 have any actions or -- or have any involvement with</p> <p>21 any such application for a special-use permit?</p> <p>22 A. No. That would -- that would fall</p> <p>23 outside of the Department's authorities and -- and</p> <p>24 rest with the -- with the Department of Army Corps.</p> <p>25 Q. Okay. Let's look at No. 10. No. 10 is</p>	<p style="text-align: right;">Page 16</p> <p>1 a number of the resources. I meant folks were, like,</p> <p>2 the Civil Rights Division, the Office of Tribal</p> <p>3 Justice, the Community Relations Service. These are</p> <p>4 the kind of tools that the Department has -- the COPS</p> <p>5 Office as well -- to assist in these -- these types of</p> <p>6 situations.</p> <p>7 Q. Okay. I want to go through the</p> <p>8 resources that you -- you mentioned that were</p> <p>9 considered, and then we can talk about whether any</p> <p>10 were actually deployed.</p> <p>11 So starting at the end there, you</p> <p>12 mentioned the COPS Office. What is the COPS?</p> <p>13 A. So that's the Office of Community</p> <p>14 Oriented Policing Services. And the COPS Office is --</p> <p>15 assists law enforcement, generally state, local,</p> <p>16 tribal law enforcement, in, you know, advancing the</p> <p>17 practice of community policing.</p> <p>18 Among other things, they provide</p> <p>19 information to local law enforcement agencies who are</p> <p>20 dealing with significant issues, such as this DAPL</p> <p>21 protest.</p> <p>22 So the COPS Office has expertise in</p> <p>23 this. They have -- you know, they have -- they have</p> <p>24 worked with police departments across the country</p> <p>25 about mass-protest situations to further</p>
<p style="text-align: right;">Page 15</p> <p>1 "Actions taken" -- excuse me. Strike that. Let me</p> <p>2 start over.</p> <p>3 "Actions considered and taken by the</p> <p>4 U.S.A. in response to use/occupation of Corps-managed</p> <p>5 land by someone without either written permission or a</p> <p>6 Special Use Permit. This request is geographically</p> <p>7 limited to the Northwest Division of the U.S. Army</p> <p>8 Corps of Engineers and includes the general or typical</p> <p>9 policies, procedures, and practices as well as those</p> <p>10 specifically for situations similar to the DAPL</p> <p>11 protests . . . ."</p> <p>12 With respect to the Department of</p> <p>13 Justice, were there any actions considered or taken in</p> <p>14 response to the use or occupation of Corps-managed</p> <p>15 land by someone without either written permission or a</p> <p>16 special-use permit?</p> <p>17 A. So the -- the Department considered a</p> <p>18 number of -- of actions and -- and things in response</p> <p>19 to the situation on the ground at that time in terms</p> <p>20 of what sort of resources that we had to deploy to</p> <p>21 support law enforcement and support the peaceful --</p> <p>22 peaceful protest and a peaceful outcome to the</p> <p>23 situation.</p> <p>24 We were overall concerned with defusing</p> <p>25 and deescalating the situation there. So we looked at</p>	<p style="text-align: right;">Page 17</p> <p>1 Constitutional policing, to handle things peacefully</p> <p>2 and lawfully.</p> <p>3 Q. When were -- when was anyone from the</p> <p>4 Community Oriented Policing Services deployed out to</p> <p>5 the DAPL protest area?</p> <p>6 A. So COPS officials met with some of the</p> <p>7 local county sheriffs approximately September 2016.</p> <p>8 They brought in other law enforcement officials who</p> <p>9 had experience with large protests and dealing with</p> <p>10 tribes.</p> <p>11 So there was a meeting, for instance, at</p> <p>12 the Morton County command center to introduce</p> <p>13 themselves and suggest strategies to deescalate</p> <p>14 tensions.</p> <p>15 Q. Okay. And I want to know specifically</p> <p>16 how many individuals. So when you say "deployment," I</p> <p>17 want to make sure I understand. Was this one</p> <p>18 individual? Was this two individuals? Was it more?</p> <p>19 A. I don't have a precise number, and I --</p> <p>20 and I don't have that information right at this</p> <p>21 moment.</p> <p>22 Q. How long did they stay out there and</p> <p>23 provide this -- this support to local law enforcement?</p> <p>24 A. I don't know precisely, but -- but I</p> <p>25 don't think it was more than a couple of days,</p>

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<p style="text-align: right;">Page 18</p> <p>1 although they may have continued to have 2 communications not in person.</p> <p>3 Q. And you understand that the protest 4 started sometime around the middle of August and 5 continued until February of 2017, so a protracted 6 period of time, correct?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. So we have the -- the Community 9 Oriented Policing Services that were out there for a 10 couple of days. What else?</p> <p>11 A. So in addition to that, the Community 12 Relations Service did also deploy and meet with many 13 stakeholders in that event.</p> <p>14 So CRS provides -- you know, they are 15 the peacemakers of the department. They were -- they 16 provide facilitated dialogue, mediation, consultation.</p> <p>17 So they are not an investigatory or 18 prosecutory agency. They actually further the 19 nonviolent resolution of issues and problems related 20 to tensions, such as those that were at the DAPL 21 protest.</p> <p>22 So they requested -- I believe they 23 were -- the Native American leadership requested their 24 services in August, and they deployed several 25 conciliators with tribal experience from their</p>	<p style="text-align: right;">Page 20</p> <p>1 part of your question?</p> <p>2 Q. I just wanted to know how long or how 3 many days they were out there.</p> <p>4 A. They were there on a number of 5 occasions, but I don't have a precise number. I know 6 they exper- -- they -- they participated, for 7 instance, in a major meeting on September 5 with 8 all -- with as many stakeholders representing the 9 different groups, both law enforcement and tribe -- 10 tribe, but also the camp folks who were from the 11 protest camps.</p> <p>12 Q. Okay. Is it fair to say that they 13 didn't provide law enforcement support with respect to 14 local and state law enforcement?</p> <p>15 A. They're not -- they're there to support 16 dialogue and try to resolve differences. So to that 17 extent, I think that that is a form of support. But I 18 think that their -- you know, their mission is to 19 facilitate dialogue between groups who are having 20 tension.</p> <p>21 Q. And the Community Relations Service as 22 well as the Community Orienting [sic] Policing --</p> <p>23 A. Policing, yeah.</p> <p>24 Q. -- Policing Services --</p> <p>25 A. Yeah.</p>
<p style="text-align: right;">Page 19</p> <p>1 regional offices. They're organized regionally and 2 have folks they are able to deploy in different parts 3 of the country.</p> <p>4 And so several were sent to the Standing 5 Rock Reservation to facilitate dialogue and help with 6 deescalation. So they were building up a rapport with 7 stakeholders, met with federal, state, and local 8 government, social services group, and -- and with -- 9 and with tribal members.</p> <p>10 Q. How many individuals from the Community 11 Relations Service were sent out to the DAPL protest 12 area?</p> <p>13 A. Several, although I -- I don't have a 14 precise number.</p> <p>15 Q. And you mentioned some of the 16 individuals that they met with, and that they were out 17 there at the request of the -- of the tribe. How long 18 were they out there?</p> <p>19 A. Well, they were requested by Native 20 American leadership, so there were also Native 21 organizations that -- that were also aware of the 22 situation there. There are many different tribes 23 who -- who were -- who were concerned with this, so we 24 were -- they were not just from a single tribe.</p> <p>25 But, I'm sorry, I -- what was the second</p>	<p style="text-align: right;">Page 21</p> <p>1 Q. -- both of those, they don't have sworn 2 peace officers; is that correct?</p> <p>3 A. That -- that is correct. I mean, the 4 COPS Office sometimes has former police officers, 5 people with a lot of experience in police -- policing 6 services and community policing, but they don't have 7 enforcement authorities.</p> <p>8 Q. Okay. What else? We talked about those 9 two. You had mentioned a couple of other resources 10 either considered or deployed. So can you tell me 11 about the others?</p> <p>12 A. The Civil Rights Division was also 13 tasked to investigate certain allegations of 14 violations of protesters' civil rights. So a DOJ 15 Civil Rights official traveled to North Dakota in 16 September of 2016 and conducted some fact-finding 17 following complaints of violations of protesters' 18 civil rights by the pipeline private security 19 personnel and state and local law enforcement.</p> <p>20 Q. Okay. What was the result of -- I'm 21 sorry. Was there something else?</p> <p>22 A. No.</p> <p>23 Q. So was that --</p> <p>24 A. Yeah, no.</p> <p>25 Q. -- all --</p>



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<p style="text-align: right;">Page 22</p> <p>1 A. And then they just con- -- and they</p> <p>2 continued to monitor the situation, because there were</p> <p>3 concerns raised about First Amendment rights being</p> <p>4 violated and so forth.</p> <p>5 Q. Okay. And what -- was that one</p> <p>6 individual?</p> <p>7 A. I believe it was one individual. I --</p> <p>8 an official, although I don't -- I don't -- I was not</p> <p>9 involved in that aspect, so I don't have my own -- my</p> <p>10 own memory of that.</p> <p>11 Q. Okay. Was there any resolution of the</p> <p>12 investigation, any recommendation that there be any</p> <p>13 actions taken by DOJ with respect to any of the</p> <p>14 alleged civil rights violations?</p> <p>15 A. I'm not aware of any charges or -- that</p> <p>16 were brought in that -- in that instance. I -- but I</p> <p>17 can't -- I also can't comment on -- on the process,</p> <p>18 their investigative process, beyond that they did look</p> <p>19 into these matters.</p> <p>20 Q. Okay. What else?</p> <p>21 A. The other piece was -- I mentioned was</p> <p>22 the Office of Tribal Justice, whose mission it is --</p> <p>23 it's to be the point of contact here at the department</p> <p>24 for Indian tribes, so -- and to provide advice on</p> <p>25 legal and policy matters.</p>	<p style="text-align: right;">Page 24</p> <p>1 I think that our considerations in that</p> <p>2 were, you know, that deploying federal law enforcement</p> <p>3 assets could actually escalate or de- -- or</p> <p>4 destabilize the situation and cause more harm than</p> <p>5 good. So although those requests were certainly</p> <p>6 considered, deployment of actual federal law</p> <p>7 enforcement agents or enforcement was not taken for</p> <p>8 that reason.</p> <p>9 And also they are very -- I would say</p> <p>10 that federal law enforcement officers are also limited</p> <p>11 in terms of their jurisdictional authority in that</p> <p>12 kind of environment where State and local authorities</p> <p>13 have the main responsibility. And also just a general</p> <p>14 sort of limitation of funding and -- and numbers</p> <p>15 available for that type of deployment.</p> <p>16 But, ultimately, our efforts were -- the</p> <p>17 center of gravity of our efforts were deescalating the</p> <p>18 situation, and so responding with additional --</p> <p>19 additional law enforcement personnel was not the path</p> <p>20 that we took.</p> <p>21 Q. Right. With respect to law enforcement</p> <p>22 assistance, the request that was received by the</p> <p>23 Department of Justice, those were received from the</p> <p>24 governor of North Dakota, correct?</p> <p>25 A. I believe the request came from -- I</p>
<p style="text-align: right;">Page 23</p> <p>1 So the Office of -- the director</p> <p>2 traveled to North Dakota in September as well, met</p> <p>3 with tribal members and protesters, and attended the</p> <p>4 state command center on a couple of occasions.</p> <p>5 Q. Okay. One individual or more than one?</p> <p>6 A. One individual that I'm aware of, yeah.</p> <p>7 Q. And a few days, is that fair to say, a</p> <p>8 week or so?</p> <p>9 A. I think that's -- that's probably right.</p> <p>10 Q. Okay. Anything else?</p> <p>11 A. Just give me a moment. No.</p> <p>12 Q. Okay.</p> <p>13 A. Actually, I have one more, yeah. I</p> <p>14 wanted to -- to mention as well, because I know there</p> <p>15 was -- there were -- there were requests for law</p> <p>16 enforcement assistance --</p> <p>17 Q. Yes.</p> <p>18 A. -- so -- so that would -- those were</p> <p>19 considered as well in terms of considerations.</p> <p>20 We received a request, you know, to</p> <p>21 assist State and local law enforcement agencies, but</p> <p>22 also we received requests to protect protesters, you</p> <p>23 know, who were concerned about civil rights</p> <p>24 violations. So we were responding to sort of both</p> <p>25 sides of that.</p>	<p style="text-align: right;">Page 25</p> <p>1 know law enforcement officials in North Dakota. There</p> <p>2 was a number of letters. There were, I believe, a</p> <p>3 letter from a member of Congress as well. The</p> <p>4 North Dakota congressional delegation sent a letter to</p> <p>5 Attorney General Lynch and others. There was a</p> <p>6 Jan- -- there was a letter from Sheriff Kirchmeier,</p> <p>7 and there was a letter from Senator Heitkamp --</p> <p>8 Q. And then also --</p> <p>9 A. -- throughout that time.</p> <p>10 Q. And then also were you aware that</p> <p>11 Attorney General Lynch had a telephone call that was</p> <p>12 attended by some officials from North Dakota as well</p> <p>13 as the State and local?</p> <p>14 A. I recall there were some phone calls</p> <p>15 made by senior officials. I didn't recall exactly if</p> <p>16 it was Attorney General Lynch, but that's not</p> <p>17 surprising that she would engage on the phone with the</p> <p>18 leaders.</p> <p>19 Q. Okay. And the requests were made</p> <p>20 directly to her for law enforcement assistance during</p> <p>21 that call?</p> <p>22 A. I'm not -- I don't have information</p> <p>23 about exactly what was said on those calls.</p> <p>24 Q. Okay. But ultimately, whether --</p> <p>25 whether it was the letters that were received by the</p>



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<p style="text-align: right;">Page 26</p> <p>1 Department of Justice, from the Congressional</p> <p>2 delegation, from the sheriff of Morton County, Sheriff</p> <p>3 Kirchmeier, or if it was with communications with</p> <p>4 Attorney General Lynch, ultimately the Department of</p> <p>5 Justice declined to send any law enforcement support</p> <p>6 with respect to law enforcement officers, right?</p> <p>7 A. I think that -- again, I think support</p> <p>8 comes in different forms, and so I think the support</p> <p>9 that we provided was aimed at supporting the law</p> <p>10 enforcement effort towards a deescalated situation and</p> <p>11 towards resolving the situation nonviolently and</p> <p>12 protecting -- and saving lives in that manner.</p> <p>13 Q. I understand what you described as the</p> <p>14 efforts or the support that was for the resources that</p> <p>15 the Department of Justice deployed that we discussed.</p> <p>16 Outside of that, so -- there wasn't any other support</p> <p>17 provided, correct?</p> <p>18 A. That's all I can recall at this time.</p> <p>19 Q. And -- and with respect to the -- the</p> <p>20 requests that were received from Sheriff Kirchmeier,</p> <p>21 Morton County, the Congressional delegation of</p> <p>22 North Dakota, those requests specifically asked for</p> <p>23 law enforcement support and not things such as Office</p> <p>24 of Tribal Justice representatives, the Civil Rights</p> <p>25 Division, Community Relations Service, or Community</p>	<p style="text-align: right;">Page 28</p> <p>1 enforcement and as well as protesters who were there</p> <p>2 assembled peacefully.</p> <p>3 Q. (BY MR. KERLIN) The Department of</p> <p>4 Justice -- well, strike that.</p> <p>5 Who at the Department of Justice made</p> <p>6 the decision not to send law enforcement officers?</p> <p>7 A. I'm not aware of a single decision-maker</p> <p>8 on this. Obviously, the top leadership, the Attorney</p> <p>9 General and the Deputy Attorney General and Associate</p> <p>10 Attorney General are the top law enforcement officials</p> <p>11 here, but also there is a -- there are many different</p> <p>12 arms of the department that were working together to</p> <p>13 form a consensus around what was the best approach</p> <p>14 here.</p> <p>15 So I think that -- that's the decision</p> <p>16 representative of that deliberative process, the</p> <p>17 outcome of -- of a ser- -- of a lot of consultations</p> <p>18 and meetings and so forth.</p> <p>19 Q. And so -- just so I'm clear, so it</p> <p>20 sounds like, and I want to make sure I understand your</p> <p>21 answer and unpack that a little bit, but that in</p> <p>22 addition to the Department of Justice, was there other</p> <p>23 departments that were consulted with and -- and</p> <p>24 discussed with about whether to send law</p> <p>25 enforcement -- and I'm specifically talking about law</p>
<p style="text-align: right;">Page 27</p> <p>1 Orienting Policy [sic] Services, right?</p> <p>2 MS. BOBET: Objection, assumes facts not</p> <p>3 in evidence. You may answer.</p> <p>4 A. I believe the focus of those requests</p> <p>5 was -- was for law enforcement resources to address</p> <p>6 the protests and illegal activity, but that's -- that</p> <p>7 was from the perspective of -- that was the</p> <p>8 perspective of the request.</p> <p>9 I think the response had -- was, you</p> <p>10 know -- was informed by the Justice Department's</p> <p>11 overall mission, which is not simply to -- which is --</p> <p>12 which is certainly public safety, front and center,</p> <p>13 but it also has to consider people's right to peaceful</p> <p>14 protest.</p> <p>15 The issue of the federal government's</p> <p>16 relationship with Indian tribes, it has a long</p> <p>17 history, and there's a trust responsibility there and</p> <p>18 a responsibility to consult and -- and -- and take --</p> <p>19 and listen to those concerns as well.</p> <p>20 And then also the civil -- as, again,</p> <p>21 the civil -- protecting people's civil rights.</p> <p>22 So I -- we were trying to address many</p> <p>23 sides to a complex problem, that was playing out on</p> <p>24 the ground, towards a peaceful end that would -- would</p> <p>25 ultimately save -- save lives on, you know, law</p>	<p style="text-align: right;">Page 29</p> <p>1 enforcement officers -- to North Dakota to support the</p> <p>2 law enforcement efforts of the State of North Dakota?</p> <p>3 A. No, no one outside of the Department of</p> <p>4 Justice, just components of the Department of Justice,</p> <p>5 who would -- would -- would advise the Attorney</p> <p>6 General, the Deputy, as to what is a recommended</p> <p>7 course of action.</p> <p>8 So that would be some of these same</p> <p>9 offices I had mentioned, the -- you know, the Civil</p> <p>10 Rights Division, the Office of Tribal Justice, but</p> <p>11 also ENRB, the Environment Division, that had the</p> <p>12 litigation.</p> <p>13 So there were a lot of different parts</p> <p>14 to this -- this particular problem set, and -- and so</p> <p>15 we were considering all different parts of it, and</p> <p>16 ultimately, you know, the decision was reached by the</p> <p>17 department leadership to take the courses of action</p> <p>18 that we -- that we took.</p> <p>19 Q. Okay. I want to talk to you -- if we</p> <p>20 bring up 13. "Actions taken by the</p> <p>21 United States . . . during the DAPL Protests regarding</p> <p>22 Corps-managed land -- lands used or affected by the</p> <p>23 DAPL Protests to" -- I'm going to go through each of</p> <p>24 these, and I would like to know what the Department of</p> <p>25 Justice did, if anything -- "protect the health and</p>

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<p style="text-align: right;">Page 30</p> <p>1 <b>safety of persons on Corps-managed land."</b></p> <p>2 A. So I -- I think that our approach was --</p> <p>3 was -- was not focused only on Corps-managed land; it</p> <p>4 was focused on where the -- these protests and</p> <p>5 protesters and clashes with -- with law enforcement</p> <p>6 sometimes were occurring in different locations.</p> <p>7 So we were concerned with the whole of</p> <p>8 the situation, whether that was on State land,</p> <p>9 Reservation land, pri- -- you know, private land, or</p> <p>10 on Corps land.</p> <p>11 So I think that the actions that we --</p> <p>12 we took were meant to protect the health and safety of</p> <p>13 persons on Corps-managed lands and -- and elsewhere.</p> <p>14 Q. Okay. Let me ask it this way: Other</p> <p>15 than what you've described when we were talking about</p> <p>16 topic No. 10, Community Orienting [sic] Policies --</p> <p>17 Policing Services, CRS, Civil Rights Division, and the</p> <p>18 Office of Tribal Justice, is it fair to say that there</p> <p>19 wasn't anything else that was done by the Department</p> <p>20 of Justice to protect the health and safety of persons</p> <p>21 on Corps-managed lands?</p> <p>22 A. I -- I think that I've described, you</p> <p>23 know, the different tools that we deployed, but</p> <p>24 that -- which were all meant to protect the health and</p> <p>25 safety of -- of people in the area.</p>	<p style="text-align: right;">Page 32</p> <p>1 outside of -- of most of DOJ's authorities, but yes.</p> <p>2 Q. Okay. You mentioned Natural Resources,</p> <p>3 I think. Did I have that right? There was somebody</p> <p>4 at DOJ with Natural Resources?</p> <p>5 A. The Environment and Natural Resources</p> <p>6 Division was the division that was handling the</p> <p>7 litigation by the Standing Rock Sioux Tribe against</p> <p>8 the Army Corps of Engineers. So the Army Corps was</p> <p>9 our client in that litigation, although the litigation</p> <p>10 was related to the pipeline, the legality of the</p> <p>11 permitting decisions around the pipeline, not the --</p> <p>12 not the decisions about the -- the Corps lands that</p> <p>13 were occupied by protesters.</p> <p>14 Q. Perfect. And we'll get to that a little</p> <p>15 later.</p> <p>16 Okay. So then I want to talk about</p> <p>17 three little i's, "prevent unlawful or unsafe</p> <p>18 activities on Corps-managed land." Is it the same</p> <p>19 answer with respect to little i that you had; that</p> <p>20 what you talked about earlier would have been the</p> <p>21 actions taken by the Department of Justice?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. The next is "clear Corps-managed</p> <p>24 land in the first quarter of 2017." Any actions taken</p> <p>25 by DOJ to help clear the land of the -- of the</p>
<p style="text-align: right;">Page 31</p> <p>1 Q. Right. Understood.</p> <p>2 And just in the interest of time, I just</p> <p>3 want to make sure that we've talked about everything</p> <p>4 that the Department of Justice did and that you've</p> <p>5 described, and so I just want to make sure.</p> <p>6 We've covered it with respect to -- I</p> <p>7 understand that you're saying that that's a larger</p> <p>8 geographical area than the Corps-managed land; that,</p> <p>9 you know, the Department of Justice looked at some</p> <p>10 bigger picture or something. That's fine and all.</p> <p>11 But with respect to the actual question,</p> <p>12 you've described some of those -- you've described,</p> <p>13 and I just want to make sure that I have the</p> <p>14 exhaustive list of it, the four things that you</p> <p>15 mentioned with response to topic No. 10. Anything</p> <p>16 else besides that for this particular --</p> <p>17 A. No.</p> <p>18 Q. -- subtopic? Okay.</p> <p>19 A. Nothing that I can recall.</p> <p>20 Q. Okay. Little -- two little i's,</p> <p>21 "protect Corps-managed lands from environmental harm</p> <p>22 or degradation." Is that the same as what you've</p> <p>23 previously described would have been the actions</p> <p>24 taken?</p> <p>25 A. Yes. They -- I think that would lie</p>	<p style="text-align: right;">Page 33</p> <p>1 protesters in the camps?</p> <p>2 A. I believe that Community Relations</p> <p>3 Service was involved in assisting the -- the plan --</p> <p>4 the State's plan and the Corps' -- the Corps' plan</p> <p>5 to -- to evacuate those areas in 2017, so in a way</p> <p>6 that would be peaceful and would allow people to get</p> <p>7 their property and -- and do that safely. So I think</p> <p>8 that there was some assistance from CRS in that.</p> <p>9 Q. Do you know how many -- do you know how</p> <p>10 many individuals were sent to assist with that</p> <p>11 process?</p> <p>12 A. I don't. I think it would have been</p> <p>13 primarily in planning and providing technical</p> <p>14 assistance, but I don't have a number.</p> <p>15 Q. And do you know how long they were</p> <p>16 there?</p> <p>17 A. And I don't right off the top of my</p> <p>18 head, no.</p> <p>19 Q. Okay. Let's look at the -- the next</p> <p>20 subcategory. It's on the next page. The last one is</p> <p>21 "prevent the use of Corps-managed land as a camp,</p> <p>22 base, or staging area from which potentially dangerous</p> <p>23 or unlawful activities may have been conducted on or</p> <p>24 off Corps-managed lands."</p> <p>25 Is what you described earlier the same,</p>

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<p style="text-align: right;">Page 34</p> <p>1 in other words, the four things that you had mentioned</p> <p>2 that the Department of Justice did provide, would that</p> <p>3 be the same for this answer, or is there anything else</p> <p>4 in addition to that?</p> <p>5 A. No. Again, I think that our approach</p> <p>6 was -- was wider than the Corps-managed land. I think</p> <p>7 it was concerned with addressing the issue in a -- in</p> <p>8 a way that would have a nonviolent outcome in -- in</p> <p>9 all of the -- the areas that -- all the affected areas</p> <p>10 there.</p> <p>11 Q. Okay. I would like to talk to you about</p> <p>12 the next topic, which is topic No. 15.</p> <p>13 "Communications between the United States and with,</p> <p>14 to, or from persons on Corps-managed lands related to</p> <p>15 the DAPL protests, or representatives or spokespersons</p> <p>16 for such persons."</p> <p>17 Can you tell me about the communications</p> <p>18 the Department of Justice would have had with</p> <p>19 protesters? And for the purpose of this topic, you</p> <p>20 know, you had mentioned one meeting. What -- that's</p> <p>21 what the focus is. It's not that someone yelled -- a</p> <p>22 protester yelled at someone who was out there and</p> <p>23 that's a communication, okay?</p> <p>24 What I'm -- what I'm trying to focus, on</p> <p>25 this, is sit-down discussions. It could be with their</p>	<p style="text-align: right;">Page 36</p> <p>1 A. I don't think I -- I don't have specific</p> <p>2 knowledge of what discussions were taking place, and I</p> <p>3 think that would be part of their -- that would not be</p> <p>4 something that I -- I would have a lot of insight into</p> <p>5 except that they were fulfilling their role, which is</p> <p>6 to listen to tribal leaders and -- but I don't -- with</p> <p>7 any -- I don't have any specificity about whether the</p> <p>8 permit itself was -- was brought up.</p> <p>9 Q. Okay. Would that be the same with any</p> <p>10 of the requirements for insurance that would have been</p> <p>11 part of the application for the special-use permit?</p> <p>12 A. Again, that would be an Army Corps</p> <p>13 decision, not something that our Office of Tribal</p> <p>14 Justice would have -- would have much say in or</p> <p>15 much -- I don't think that would be the focus of their</p> <p>16 discussions.</p> <p>17 Q. Okay. But if -- if the Corps wanted to</p> <p>18 initiate some type of legal action, wouldn't that be</p> <p>19 done through the Department of Justice, like it was</p> <p>20 with the ER- -- the ENR handling the litigation on</p> <p>21 behalf of the Army Corps of Engineer?</p> <p>22 A. So in terms of where -- I guess to</p> <p>23 return to the -- to the topic in terms of the</p> <p>24 communications with protesters, I'm just -- I think</p> <p>25 this was about tribal -- the Office of Tribal Justice</p>
<p style="text-align: right;">Page 35</p> <p>1 leadership or with whomever, but -- but something a</p> <p>2 little bit more in depth than just yelling -- you</p> <p>3 know, just a casual encounter, if that makes sense.</p> <p>4 If it doesn't, let me know, and I'll try and clarify</p> <p>5 it a little bit more.</p> <p>6 A. That makes sense. And I think there was</p> <p>7 communication by CRS officials, who on multiple</p> <p>8 occasions met with tribal representatives, they met</p> <p>9 with protesters and individuals who held themselves</p> <p>10 out as -- as leaders of those camps, and other</p> <p>11 stakeholders. So those were -- there were</p> <p>12 communication with -- with folks in that regard.</p> <p>13 I would say tribal justice as well</p> <p>14 communicated with tribal members directly, some of</p> <p>15 whom were involved in protest activity and some of</p> <p>16 whom were not, who were just in tribal leadership, for</p> <p>17 instance, who had equities in this.</p> <p>18 Q. For those discussions that was with --</p> <p>19 that were with tribal leadership, was there any</p> <p>20 discussion by the Department of Justice about the</p> <p>21 special-use permit, or the conditions were not being</p> <p>22 met of the special-use permit, that the size of the</p> <p>23 protests had grown much larger than what was in the</p> <p>24 application for the special-use permit, or things like</p> <p>25 that?</p>	<p style="text-align: right;">Page 37</p> <p>1 meeting with tribal members who -- who were -- some of</p> <p>2 whom were and some of who were not involved in -- in</p> <p>3 protests. So that would not -- OTJ is not a -- it's</p> <p>4 not a litigative arm of the Department of Justice.</p> <p>5 It's a point of contact with tribal governments at</p> <p>6 DOJ. So that's their -- that's their mission. It's</p> <p>7 not to enforce or negotiate litigative -- you know,</p> <p>8 litigation.</p> <p>9 Q. Was there -- were there any requests</p> <p>10 made by the Department of Justice through the -- the</p> <p>11 different groups that you've mentioned, Tribal Justice</p> <p>12 or -- or the others that met with tribal leaders, that</p> <p>13 they needed to leave the Corps land? Any requests</p> <p>14 made to leave the Corps land?</p> <p>15 A. I'm not aware of the substance of those</p> <p>16 discussions.</p> <p>17 Q. Okay. Let's do this: Let's talk about</p> <p>18 number -- let's move on to No. 20, please.</p> <p>19 A. Okay. I would -- just to com- -- I'm</p> <p>20 sorry. If I could -- just to complete the response, I</p> <p>21 would say also the Civil Rights officials were</p> <p>22 communicating with protesters in the course of their</p> <p>23 investigations and potential violations of protesters'</p> <p>24 civil rights. So that would be one more contact, you</p> <p>25 know, direct contact, communications with protesters.</p>

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<p style="text-align: right;">Page 38</p> <p>1 Q. Okay. Just to kind of close that out,                  2 with respect to any of the contents of those                  3 communications that you mentioned, the details of it,                  4 if there was any requests made by the Department of                  5 Justice that, you know, "Hey, we respect your civil                  6 right, but you can't stay here because you don't have                  7 a permit," if there was any such discussions like                  8 that, you're not aware of those, correct?                  9 A. I'm not. I'm not. I would -- yeah, I                  10 would just add that -- that also -- I mean, there                  11 were -- there were Main Justice attorneys who were                  12 responsible for the litigation with the tribe that                  13 had, you know, communications with counsel for the                  14 tribe, to the extent that those attorneys for the                  15 tribe are considered representatives of protesters, so                  16 I just wanted to mention that.                  17 Q. Okay. All right. Let's talk about                  18 topic No. 20, "Decisions by the United States to                  19 provide or withhold law enforcement assistance to                  20 State and local authorities during the DAPL protests."                  21 We've talked a little bit, I think,                  22 about this in a prior topic. Do you have anything to                  23 add to this with respect to the decision by the                  24 Department of Justice to provide or withhold law                  25 enforcement assistance to State and local authorities</p>	<p style="text-align: right;">Page 40</p> <p>1 enforcement support -- and by that I mean officers --                  2 were never sent by the Department of Justice, that                  3 decision remained the same, correct? In other words,                  4 at the beginning, "We're not going to send it," at the                  5 end, "We're not going to send it." And is the reason                  6 why is that the concern was that the Department of                  7 Justice thought it would somehow increase tensions?                  8 A. I would say that that's correct. I                  9 can't -- I think by the time it was late, you know,                  10 December, January, and February, again, it was not the                  11 same -- the public safety aspect of it was less in                  12 terms of direct clashes, and it turned to the                  13 eventual -- you know, the de- -- the deescalation and                  14 the eventual evacuation of -- of the area, to --                  15 Q. Did the --                  16 A. -- for the safety of everybody.                  17 Q. Did the Department -- excuse me. I                  18 didn't mean to interrupt.                  19 Did the Department of Justice ever                  20 direct any other agency not to send law enforcement                  21 support, such as the Department of Homeland Security?                  22 A. Not that I'm aware, no. And we -- we                  23 wouldn't -- the Department of Justice wouldn't be able                  24 to direct Homeland Security in that fashion. I don't                  25 know if Homeland Security received separate requests</p>
<p style="text-align: right;">Page 39</p> <p>1 during the DAPL protests?                  2 A. No. I believe I covered it in my                  3 earlier answers; that the -- that the focus was to                  4 defuse tensions and to deescalate, and there was a                  5 concern that additional law enforcement resources,                  6 federal law enforcement, could destabilize the                  7 situation.                  8 Q. Okay. Did that perspective that DOJ                  9 had, did that change over time? In other words, early                  10 on in the protests, was that a concern, and was that                  11 less of a concern, you know, closer to the end of the                  12 protests in February? Or was that the same decision                  13 from beginning to end by Department of Justice: "If                  14 we send any law enforcement support, such as uniformed                  15 officers or something like that, it will make -- we                  16 believe it will make the situation worse, so we're not                  17 going to do that"?                  18 A. I don't -- I don't believe we did. I                  19 think by the time winter -- you know, it was                  20 January and February, I think, the pro- -- the size                  21 had -- had -- had diminished significantly, and -- of                  22 the protests, and there -- the focus was on the safe                  23 evacuation of the remaining, you know, protesters in a                  24 way that was orderly and safe.                  25 Q. And -- and I take it because law</p>	<p style="text-align: right;">Page 41</p> <p>1 and -- or how that was handled.                  2 Q. Okay. All right. We're going to -- I                  3 want to talk to you a little bit -- we can take this                  4 down.                  5 Mr. Hornbuckle, I want to talk to you a                  6 little bit -- I want to -- I jumped right into the                  7 topics. I want to take a step back and talk to you a                  8 little bit about your background and your involvement                  9 with the Department of Justice and your employment                  10 with the Department of Justice.                  11 So briefly could you tell me what your                  12 educational background is?                  13 A. Sure. I have a bachelor's of the arts                  14 degree in -- I was a history major. I went to                  15 Birmingham-Southern College. And I have a master's of                  16 public administration from Binghamton University in --                  17 in Upstate New York. And I recently completed a                  18 master's of science at the National War College in --                  19 in the National Defense University in 2021. I was the                  20 class of 2021.                  21 Q. Congratulations.                  22 A. Thanks.                  23 Q. Any particular focus for that master's                  24 of science?                  25 A. I focused on -- it's a -- the focus is</p>

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<p style="text-align: right;">Page 42</p> <p>1 national security strategy formulation, but I focused 2 on China and -- and some other information strategies, 3 influence strategies.</p> <p>4 Q. Okay. When did you -- after -- 5 Well, let me start this way, because you 6 did seem like you've had some education as you've been 7 employed as well, and usually I kind of take this and 8 say, "After your education, where did you work," but 9 you've been working during the same time, it sounds 10 like.</p> <p>11 What was your first job in your 12 professional career?</p> <p>13 A. My first job was a newspaper journalist 14 for two years, back in -- and then I joined the U.S. 15 Foreign Service. I was a Foreign Service officer for 16 seven years for the Department of State.</p> <p>17 And then in 2006, I joined the Justice 18 Department at the U.S. Attorney's Office in Arizona 19 for four years as a public affairs and a law 20 enforcement coordination specialist there.</p> <p>21 And then in 2010, I came to Main 22 Justice, to the Office of Public Affairs.</p> <p>23 Q. Okay. And you've been there since? 24 A. Yes. 25 Q. And then let's just start in 2010, your</p>	<p style="text-align: right;">Page 44</p> <p>1 another career official here.</p> <p>2 Q. Okay. So as Deputy Director of Public 3 Affairs in the 2016 time period, so during these DAPL 4 protests, what was your role? Like what -- what did 5 you do?</p> <p>6 A. So in addition to being a public affairs 7 specialist or a spokesman -- spokesman for the office, 8 I have the portfolio of Native American issues, so 9 American Indian and Alaska Native affairs issues. So 10 that was since about 2012, I think, I've had that 11 portfolio, and so I just carried that into that role. 12 But also as deputy, I would -- I would also be 13 expected to work with our leadership offices to solve 14 complicated problems, you know, communications 15 problems such as this. So that's what -- it grew out 16 of that role of dealing with Native American issues. 17 I worked on Native American issues in Arizona a lot as 18 well, so I had a -- I just have a lot of background in 19 the area.</p> <p>20 Q. And prior to the DAPL protests, would 21 you ever have occasion to prepare press releases? 22 A. Yes. 23 Q. Is that something that you did in -- and 24 I'm going to describe it as the ordinary course of 25 your business?</p>
<p style="text-align: right;">Page 43</p> <p>1 titles. So when you first joined Main Justice Public 2 Affairs, what was your title?</p> <p>3 A. I was a public affairs specialist.</p> <p>4 Q. Has that changed over the years?</p> <p>5 A. In 2014, I was promoted to be the -- the 6 Deputy Director of Public Affairs, so the career 7 deputy here.</p> <p>8 Q. Is that what you -- do you still have 9 that same role today?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. As Deputy Director of Public 12 Affairs, who do you report to?</p> <p>13 A. I report to the -- to the Director of 14 Public Affairs.</p> <p>15 Q. And in 2016 and 2017, who would have 16 that been?</p> <p>17 A. At the end of 2016, I believe we had an 18 acting director. I know Kevin Lewis, I worked a lot 19 with, because our director was on maternity leave, I 20 think, at the end. The director was Melanie Newman.</p> <p>21 And then -- and then when the 22 administration changed, the first director, but I 23 don't think she came until Aug- -- until March -- 24 March, was Sarah Flores, so there was an acting 25 director, Peter Carr, in January and February, who was</p>	<p style="text-align: right;">Page 45</p> <p>1 A. Yes.</p> <p>2 Q. Prior to the DAPL protests, did you 3 ever -- were you ever involved with preparing a press 4 release that would involve more than one agency?</p> <p>5 A. Yes. On occasion, yeah.</p> <p>6 Q. And what would be an occasion that -- 7 that you would prepare a press release that might 8 involve more than one agency?</p> <p>9 A. It could be any number of occasions 10 where -- where something is done in partnership with 11 other agencies, or is something that -- where we're 12 speaking with one voice with other executive agencies.</p> <p>13 So that could be a law enforcement 14 operation with, you know, the DEA or the BIA or 15 something of that nature, or it could be something 16 with the Environmental Protection Agency that -- where 17 they have a lot of interest in -- in the issue and 18 want to be involved in -- in that.</p> <p>19 So, yes, it's -- it's not our everyday 20 process, but it's not uncommon.</p> <p>21 Q. Okay. And there's two joint statements 22 that were -- that I want -- that we're going to 23 specifically talk about today, but that were issued by 24 the Department of Justice, Department of the Interior, 25 and the Department of the Army, one on September 9,</p>



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<p style="text-align: right;">Page 46</p> <p>1 2016, and the other on October 10, 2016. Are you</p> <p>2 familiar with those joint statements?</p> <p>3 A. Yes, I am.</p> <p>4 Q. And -- and are those joint statements</p> <p>5 the type of statement that you are kind of describing</p> <p>6 when you said "in partnership with other agencies" and</p> <p>7 so that, I guess, the United States is speaking with</p> <p>8 one voice on an issue?</p> <p>9 A. Yes.</p> <p>10 MR. KERLIN: Okay. I tell you what,</p> <p>11 it's a little short of an hour, but I think I'm going</p> <p>12 to go ahead and take a break at this point, if we</p> <p>13 could, and just maybe come back at 11 o'clock.</p> <p>14 THE DEPONENT: Okay. Sure. That --</p> <p>15 that works for me.</p> <p>16 THE VIDEOGRAPHER: Going off the record.</p> <p>17 The time is 4:51 p.m. UTC, 9:51 a.m. Mountain.</p> <p>18 (Recess taken 9:51 a.m. to 10:02 a.m.</p> <p>19 Mountain Standard Time.)</p> <p>20 THE VIDEOGRAPHER: We're back on the</p> <p>21 record. The time is 5:02 p.m. UTC, 10:02 a.m.</p> <p>22 Mountain.</p> <p>23 Q. (BY MR. KERLIN) Mr. Hornbuckle, we're</p> <p>24 back after a short break. Are you able to continue?</p> <p>25 A. Yep, I'm ready.</p>	<p style="text-align: right;">Page 48</p> <p>1 certain news articles that report on the situation</p> <p>2 as -- as it's progressing so we have an awareness of</p> <p>3 that external environment.</p> <p>4 Q. Okay. So I want to go through some of</p> <p>5 the individuals that are on the distribution list. So</p> <p>6 there's a lot of individuals from the Department of</p> <p>7 Justice. In addition to it, if we can -- we're going</p> <p>8 to go down to probably about halfway through it,</p> <p>9 there's an individual, Tommy Beaudreau, and then</p> <p>10 Michael Connor. Do you see those?</p> <p>11 MS. BOBET: While we're looking for</p> <p>12 those, Paul, can you point me towards which topic in</p> <p>13 particular this pertains to?</p> <p>14 A. Okay.</p> <p>15 MR. KERLIN: This one? Yeah, this is</p> <p>16 going to relate to the Court's ruling. It's "Judge</p> <p>17 Grants Partial Stop on North Dakota Pipeline Work," so</p> <p>18 I believe this is the run-up to the September 9</p> <p>19 statement.</p> <p>20 A. So I see it. I see it now, yeah.</p> <p>21 Q. (BY MR. KERLIN) Okay.</p> <p>22 MS. BOBET: Note that this is within</p> <p>23 our -- are you talking about topic 21?</p> <p>24 MR. KERLIN: Yes.</p> <p>25 MS. BOBET: Okay. I don't know if this</p>
<p style="text-align: right;">Page 47</p> <p>1 Q. Okay. If we can bring up -- it's the</p> <p>2 document labeled ARMY 28388, please.</p> <p>3 And I would like to label it as the next</p> <p>4 exhibit. I'm not certain what exhibit we're up to.</p> <p>5 THE REPORTER: I believe on Tuesday we</p> <p>6 introduced Exhibit 849.</p> <p>7 MR. KERLIN: Okay. Thank you. So we'll</p> <p>8 call this 850.</p> <p>9 (Deposition Exhibit 850 was remotely</p> <p>10 introduced.)</p> <p>11 Q. (BY MR. KERLIN) Mr. Hornbuckle, I have</p> <p>12 an email on your screen. Can you see that?</p> <p>13 A. Yes, I can.</p> <p>14 Q. Okay. The date of it is September 6 of</p> <p>15 2016. It's from you, and it's to a very large --</p> <p>16 large distribution list. Do you see that?</p> <p>17 A. Yeah. Yes, I do.</p> <p>18 Q. My question is -- and -- and if we could</p> <p>19 scroll down to the -- what was sent. Why did you send</p> <p>20 this email?</p> <p>21 A. Well, in the course of my duties, this</p> <p>22 is just something I would -- I would normally do when</p> <p>23 something had attracted a lot of publicity and a lot</p> <p>24 of people were watching it. That's something that</p> <p>25 involves -- Public Affairs would do, would circulate</p>	<p style="text-align: right;">Page 49</p> <p>1 is within our understanding or prior conferral about</p> <p>2 topic 21, but it sounds like the questions are -- are</p> <p>3 about Mr. Hornbuckle's own knowledge, at least so far,</p> <p>4 so he can continue to testify for himself about this.</p> <p>5 Q. (BY MR. KERLIN) Okay. Mr. Hornbuckle,</p> <p>6 and for this question and for this document, in your</p> <p>7 personal capacity, do you -- I'm asking for -- not</p> <p>8 necessarily you in the representative capacity.</p> <p>9 Tommy Beaudreau, is he with the</p> <p>10 Department of the Interior?</p> <p>11 A. I don't recall him, yeah, but,</p> <p>12 obviously, he is in this instance because he says</p> <p>13 he -- the Interior Office of the Secretary, Department</p> <p>14 of Interior, that's how I read the -- the -- the email</p> <p>15 address.</p> <p>16 Q. Yeah. The next one is Michael Connor.</p> <p>17 Do you know who Michael Connor is?</p> <p>18 A. You know, it's been a long time, so if I</p> <p>19 did interact with him, I don't -- I don't recall him</p> <p>20 specifically.</p> <p>21 Q. If you go down two more lines, there's</p> <p>22 Darren Cruzan with BIA. I believe that's the Bureau</p> <p>23 of Indian Affairs. Do you see that?</p> <p>24 A. Yes.</p> <p>25 Q. Okay. Jo-Ellen Darcy is the next one</p>

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<p style="text-align: right;">Page 50</p> <p>1 with the Army. Do you see that?</p> <p>2 A. Yep, I see that.</p> <p>3 Q. Okay. There's another, Jody Cummings</p> <p>4 with the Department of the Interior. Do you see that</p> <p>5 one?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. Rosa Salamanca, who is Rosa</p> <p>8 Salamanca?</p> <p>9 A. She is with CRS. I believe she's a -- a</p> <p>10 conciliator with CRS, but I'm not positive.</p> <p>11 Q. Okay. Was she the individual, when you</p> <p>12 were talking about CRS, that went into the -- went</p> <p>13 into the camps and spoke with the -- with the Native</p> <p>14 Americans?</p> <p>15 A. I'm just not sure. I don't have</p> <p>16 specific information about who -- who was in those</p> <p>17 meetings.</p> <p>18 Q. If we keep going down, there's a couple</p> <p>19 more on here. There's a Lowry Crook. Do you know who</p> <p>20 Lowry Crook is?</p> <p>21 A. Just from email traffic.</p> <p>22 Q. Okay. My question is, why is someone at</p> <p>23 the Department of Justice sending out --</p> <p>24 You know, it makes sense for you to send</p> <p>25 it to the Department of Justice, but this distribution</p>	<p style="text-align: right;">Page 52</p> <p>1 would have included many of these folks who were</p> <p>2 within the department, but I -- I don't -- I don't</p> <p>3 recall creating a list specifically for this, but</p> <p>4 it's -- it's possible. And I don't think this -- I</p> <p>5 doubt this list, though.</p> <p>6 Q. If we can bring up MYERS 10012. And</p> <p>7 we'll label this 851.</p> <p>8 (Deposition Exhibit 851 was remotely</p> <p>9 introduced.)</p> <p>10 Q. Mr. Hornbuckle, this is a -- it looks to</p> <p>11 be an invitation for a -- for a, I guess, call-in</p> <p>12 invitation for a conference call or something of that</p> <p>13 nature. The date of this one is September 9 [sic] of</p> <p>14 2016, and for required attendees, you're the first one</p> <p>15 on the list.</p> <p>16 Do you recall having a -- having either</p> <p>17 an occasional call or a standing call where there</p> <p>18 would be a discussion amongst a number of different</p> <p>19 individuals at DOJ, the FBI, and others about the --</p> <p>20 about the DAPL protests?</p> <p>21 A. Well, looking at the date -- well, we</p> <p>22 would have had periodic calls on something of this</p> <p>23 nature to share information and to coordinate.</p> <p>24 But this one, it was on, it looks like,</p> <p>25 September 7, and this was after the Labor Day weekend,</p>
<p style="text-align: right;">Page 51</p> <p>1 list is much broader than that and includes other</p> <p>2 agencies, okay? Do you know why you were sending this</p> <p>3 out to such a broad distribution group?</p> <p>4 A. You know, I don't recall sending this</p> <p>5 particular email. It's -- it's quite possible that I</p> <p>6 simply replied all to a -- to a previous email that --</p> <p>7 that had a lot of interested parties, and so it was</p> <p>8 just spreading information.</p> <p>9 It's public information. It's an ABC</p> <p>10 news story, so it's not something I would -- I would</p> <p>11 be very concerned that it remained within the</p> <p>12 department because it's just public-facing public</p> <p>13 information.</p> <p>14 Q. Okay. Do you recall if you had a</p> <p>15 particular distribution list that you had prepared to</p> <p>16 disseminate information about the DAPL protests or the</p> <p>17 Court's rulings on any of the -- for instance, the</p> <p>18 DAPL pipeline?</p> <p>19 A. I -- I don't recall originating a list.</p> <p>20 I think there were a number of threads that I would</p> <p>21 have been on in -- in some of these communications, so</p> <p>22 I might have utilized those to just reach, you know,</p> <p>23 the people I need to.</p> <p>24 If I was originating something that was</p> <p>25 purely within the department, I would have just -- I</p>	<p style="text-align: right;">Page 53</p> <p>1 as I recall, when there were some videos that came out</p> <p>2 where protesters were involved in an altercation with</p> <p>3 some private security detail, and it was on --</p> <p>4 captured on video where there were dogs involved,</p> <p>5 canine security.</p> <p>6 And so that was, I believe, one of the</p> <p>7 precipitations of the need to -- that this was -- had</p> <p>8 created, you know, a lot of concern about -- again</p> <p>9 about things escalating in -- in that area, so there</p> <p>10 was a desire to communicate.</p> <p>11 So that's my -- that's my guess, but</p> <p>12 this would not be unusual to have a conference call on</p> <p>13 something of this nature.</p> <p>14 Q. Any discussion about the -- either the</p> <p>15 ruling by Judge Boasberg to temporarily halt the DAPL</p> <p>16 construction pipeline, or the soon-to-be-released</p> <p>17 ruling by Judge Boasberg about the request for a</p> <p>18 temporary injunction?</p> <p>19 MS. BOBET: I'll object here to the</p> <p>20 extent the question is calling for the substance of</p> <p>21 communications involving attorneys in the context of</p> <p>22 litigation or -- or where legal advice might have been</p> <p>23 provided. That substance is privileged, and I'll</p> <p>24 instruct Mr. Hornbuckle not to answer.</p> <p>25 If it's not calling for the substance,</p>



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<p style="text-align: right;">Page 54</p> <p>1 then you may answer aside from that.</p> <p>2 A. Okay. Aside from that, I mean, and this</p> <p>3 was certainly in the time frame between -- you know,</p> <p>4 leading up to Judge Boasberg's ruling on the 9th. So</p> <p>5 I don't know if that -- again, I'm not going to</p> <p>6 comment on the substance of that discussion. For one,</p> <p>7 I don't -- I don't have a recollection of exactly --</p> <p>8 of that -- this particular call.</p> <p>9 But this is not unusual for us to talk</p> <p>10 about the various aspects and the updates of the</p> <p>11 things that had occurred, the facts.</p> <p>12 Q. (BY MR. KERLIN) Okay. And just so I'm</p> <p>13 clear, you wouldn't have been providing any legal</p> <p>14 advice, right? I mean, you're a Department of Justice</p> <p>15 employee, but you're not an attorney, right?</p> <p>16 A. That's correct.</p> <p>17 Q. All right. Let's pull up MYERS 43796,</p> <p>18 please.</p> <p>19 (Deposition Exhibit 852 was remotely</p> <p>20 introduced.)</p> <p>21 Q. Mr. Hornbuckle, this is another email</p> <p>22 from you to a number of individuals at various</p> <p>23 agencies. It's dated September 7, 2016, at 4:21 p.m.</p> <p>24 Can you see that on your screen?</p> <p>25 A. Yes, I can.</p>	<p style="text-align: right;">Page 56</p> <p>1 President Obama on one of these links, correct?</p> <p>2 A. I don't recall which -- which link, but</p> <p>3 I think that -- yeah, so I think just some of the</p> <p>4 articles must have captured his -- his comments.</p> <p>5 Q. If we look at the first link, it appears</p> <p>6 to be a C-SPAN video, and then it says</p> <p>7 "obama-dakota-access-pipeline." Do you see that?</p> <p>8 A. Uh-huh, yeah.</p> <p>9 Q. Okay.</p> <p>10 A. That might have been it.</p> <p>11 Q. So we're going to go to the next</p> <p>12 document, and this is going to be back to your</p> <p>13 representative capacity, I believe. ARMY 117974.</p> <p>14 We'll make this Exhibit 853.</p> <p>15 (Deposition Exhibit 853 was remotely</p> <p>16 introduced.)</p> <p>17 Q. Okay. This is an email chain. We can</p> <p>18 start at the end and work our way up. I'll tell you</p> <p>19 there's not a whole lot of substance on it that I'm</p> <p>20 going to be able to discuss with you because it's been</p> <p>21 redacted.</p> <p>22 But at the bottom, if we go to the</p> <p>23 bottom, or at least the last -- there's a Hilary</p> <p>24 Tompkins, Solicitor, Office of the Solicitor,</p> <p>25 Department of the Interior. Do you know who she is?</p>
<p style="text-align: right;">Page 55</p> <p>1 Q. I'm going to go ahead and label this</p> <p>2 852. And --</p> <p>3 MS. BOBET: And is this -- again, is</p> <p>4 there a nexus to topic 21 for this document or is</p> <p>5 this --</p> <p>6 MR. KERLIN: No.</p> <p>7 MS. BOBET: -- another instance where he</p> <p>8 can testify in his personal capacity?</p> <p>9 MR. KERLIN: This will be his personal</p> <p>10 capacity for this document.</p> <p>11 MS. BOBET: Okay.</p> <p>12 Q. (BY MR. KERLIN) Mr. Hornbuckle, the</p> <p>13 substance of your email says, "Below are some recent</p> <p>14 articles on the protests, et cetera, including a</p> <p>15 statement by President Obama answering a question</p> <p>16 during his trip to Laos." Do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. And by this distribution, you</p> <p>19 were making everyone aware of President Obama's</p> <p>20 comments on the DAPL protests that he made in Laos,</p> <p>21 correct?</p> <p>22 A. Correct.</p> <p>23 Q. Okay. And -- and you -- and you mention</p> <p>24 on here -- or it's one of the links that you have</p> <p>25 included, but it actually includes the comments of</p>	<p style="text-align: right;">Page 57</p> <p>1 A. Yes. She was the Solicitor -- Solicitor</p> <p>2 at the time.</p> <p>3 Q. Okay. Then if we go up to the next</p> <p>4 page, there's Sam Hirsch. Do you know who Sam Hirsch</p> <p>5 is?</p> <p>6 A. Yeah, I know Sam.</p> <p>7 Q. Principal Deputy Assistant Attorney</p> <p>8 General, Environmental and Natural Resources Division?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. Do you know if Mr. -- if Sam</p> <p>11 Hirsch was the person with the Department of Justice</p> <p>12 that was involved representing the Army Corps of</p> <p>13 Engineers in the litigation that the Standing Rock</p> <p>14 Sioux Tribe had initiated to try and stop construction</p> <p>15 of the DAPL pipeline?</p> <p>16 A. Sam was the principal deputy, so he</p> <p>17 would have been the number-two official in the ENRD at</p> <p>18 the time. So his -- he would have been over the</p> <p>19 litigation team that was handling the DAPL case. But</p> <p>20 he wouldn't have been -- personally he wouldn't have</p> <p>21 been on the case team, necessarily, but certainly in</p> <p>22 charge.</p> <p>23 Q. Okay. And then the substance has been</p> <p>24 redacted, so I don't have anything to ask you there</p> <p>25 because I don't have it.</p>

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<p style="text-align: right;">Page 58</p> <p>1 If we go up a page, the start of his --</p> <p>2 his email. So it's Friday, September 9, at 10:02 a.m.</p> <p>3 And it says -- just for the start, it says, "Dear</p> <p>4 Corps, Interior, and Justice colleagues," and then</p> <p>5 everything else is redacted. Do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. When we go above -- at the top of</p> <p>8 that page, it's an email from -- from Hilary Tompkins.</p> <p>9 The cc list is extremely long, so I'm not going to go</p> <p>10 through all of that. But the subject is "Re: Final</p> <p>11 Drafts of Statements." Do you see that?</p> <p>12 A. Uh-huh.</p> <p>13 Q. Okay. Again, the substance is redacted,</p> <p>14 so I -- but it does look like you're on that</p> <p>15 particular distribution, okay?</p> <p>16 A. Okay.</p> <p>17 Q. All right. And we'll go back one more</p> <p>18 page, and now we're back at the top.</p> <p>19 Oh, I'm sorry, there's one more I missed</p> <p>20 in between. There's an email from Sam Hirsch, and</p> <p>21 then it says "Final Drafts," and it says, "Thanks,</p> <p>22 Sam." Again, it's redacted. I don't have anything to</p> <p>23 ask you there because I can't see it.</p> <p>24 And then at the top is your email. I</p> <p>25 don't know if it's in reply to everyone -- it looks</p>	<p style="text-align: right;">Page 60</p> <p>1 draft. I received it as a -- as a -- as a draft from</p> <p>2 the Associate Attorney General's office, which was</p> <p>3 over ENRD; and then -- and then it was circulated with</p> <p>4 a number of offices for input or -- or review.</p> <p>5 Q. Did the Department of Justice prepare</p> <p>6 the initial draft, or the Department of the Interior,</p> <p>7 or the Department of the Army?</p> <p>8 A. I -- I don't know who prepared the --</p> <p>9 the initial draft. I received it from within the</p> <p>10 department, and then -- and then it was shared with --</p> <p>11 with the Army and with the U.S. Attorney's Office and</p> <p>12 other parts of the department for input and -- and</p> <p>13 information over -- over the course of, you know, the</p> <p>14 next day, the 8th.</p> <p>15 Q. Whose idea was it to prepare the joint</p> <p>16 statement?</p> <p>17 A. I don't think it -- the idea originated</p> <p>18 with any one person. I think that we understood a</p> <p>19 ruling was -- was imminent, and there was a desire to</p> <p>20 have -- to address it in a way that would inform</p> <p>21 people what had happened and to also promote -- try to</p> <p>22 defuse tensions, talk about the action -- the review</p> <p>23 that was taking -- that the Army would -- was</p> <p>24 continuing to conduct.</p> <p>25 So the overall, you know, intent was</p>
<p style="text-align: right;">Page 59</p> <p>1 like it might be -- on the prior email, that is.</p> <p>2 And it says, "Some news coverage," and</p> <p>3 then it mentions the "key-ruling-dakota-access-</p> <p>4 pipeline-due-end-of-friday," and -- in the link, that</p> <p>5 is, so there's a link to an article that you sent out.</p> <p>6 Do you see that?</p> <p>7 A. Yep.</p> <p>8 Q. Okay. So I want to talk to you about</p> <p>9 the September 9, 2016, statement. Who drafted the --</p> <p>10 the initial statement to that -- that --</p> <p>11 And we can pull up -- just so that we're</p> <p>12 clear, make sure we're talking about the same thing,</p> <p>13 if we pull up Exhibit -- I think it's 494.</p> <p>14 This is the statement. It continues on</p> <p>15 to the next page, okay? You're familiar with this</p> <p>16 particular statement, correct?</p> <p>17 A. Correct.</p> <p>18 Q. Okay. So I --</p> <p>19 When did you first hear about</p> <p>20 preparation of a joint statement?</p> <p>21 A. So I think I received a draft of this --</p> <p>22 the initial statement around the 7th, or late on the</p> <p>23 7th, or the 8th, or the morning of the 8th.</p> <p>24 Q. Okay. Who prepared the first draft?</p> <p>25 A. I don't know who prepared the first</p>	<p style="text-align: right;">Page 61</p> <p>1 to -- to inform the public, defuse tensions, talk</p> <p>2 about how the government was addressing these issues,</p> <p>3 and -- and therefore explain, communicate this so</p> <p>4 that -- in a way that would help promote nonviolence.</p> <p>5 Q. From the Department of Justice, who was</p> <p>6 involved in reviewing and commenting on the draft</p> <p>7 statement?</p> <p>8 A. There were a number of people. There</p> <p>9 was certainly Sam Hirsch in the Office of the</p> <p>10 Associate -- in the Office of Associate Attorney</p> <p>11 General, the COPS Office, CRS, OTJ, the</p> <p>12 U.S. Attorney's Office in -- in North Dakota, and</p> <p>13 others. I could give you a little bit more -- more of</p> <p>14 a list, if you would like.</p> <p>15 Q. Who from North Dakota?</p> <p>16 A. That would have been Chris Myers. He,</p> <p>17 you know --</p> <p>18 Q. Okay.</p> <p>19 A. -- as the -- as the U.S. Attorney at the</p> <p>20 time.</p> <p>21 Q. Just to be clear, the Department of</p> <p>22 Justice didn't get input or comment from anyone from</p> <p>23 the State of North Dakota or any State or local</p> <p>24 officials that were actually out there where the</p> <p>25 protests were occurring; is that correct?</p>

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<p style="text-align: right;">Page 62</p> <p>1 A. That's correct, but -- but, again,                  2 not -- not unusual. This would be a -- our response                  3 to -- to a federal court ruling, so something we would                  4 coordinate among the federal partners who -- who --                  5 involved in this issue, but not necessarily others.</p> <p>6 Q. Okay. Any consideration that the                  7 Department of Justice had regarding the impact that                  8 this statement would have on the protesters to                  9 embolden them?</p> <p>10 A. I think the concern was actually to --                  11 the concern and the intent of the statement was to the                  12 contrary. It was not -- it was meant to dial things                  13 down, to -- to communicate that there was an ongoing                  14 review, to call for a pause in pipeline construction                  15 near the lake, which was the source of -- of the major                  16 concerns raised by the protesters and the tribe,                  17 and -- and to -- so to deescalate tensions, not to --                  18 to escalate or prolong or -- things.</p> <p>19 Q. So the Department of Justice, the                  20 Environmental and Natural Resources Division,                  21 represents the Army Corps of Engineers, okay, in this                  22 litigation, right?</p> <p>23 A. Correct.</p> <p>24 Q. As part of representing the Army                  25 Corps of Engineers, they are defending the Army</p>	<p style="text-align: right;">Page 64</p> <p>1 Pipeline in particular, but also about pipeline                  2 decision-making more broadly, and -- and to announce                  3 these -- a series of consultations toward that end.</p> <p>4 So it had -- it had a purpose that went                  5 beyond just the -- the -- explaining the litigation                  6 position or status.</p> <p>7 Q. (BY MR. KERLIN) While I appreciate --                  8 while I appreciate your answer, I just want to make                  9 sure that it's clear, the Department of Justice,                  10 through its division with Environmental and Natural                  11 Resources, was pushing for a particular position, and                  12 that was that the Army -- defending the Army Corps of                  13 Engineers' decisions and what had happened in order to                  14 get the pipeline to the point it was so that it could                  15 be appropriately permitted and constructed, right?</p> <p>16 A. From that -- from a litigation                  17 standpoint, correct.</p> <p>18 Q. Yes. Okay. And now this joint                  19 statement is being issued after the Department of                  20 Justice won; they got the ruling that they were                  21 seeking. They are now issuing a statement with two                  22 other agencies that are a contra- -- that is in --                  23 it's directly contradictory to the ruling they just                  24 got from the Court, correct?</p> <p>25 MS. BOBET: Objection, misstates</p>
<p style="text-align: right;">Page 63</p> <p>1 Corps of Engineers' decision in the litigation, that                  2 everything was done appropriately, and urging                  3 Judge Boasberg to deny the request for a temporary                  4 injunction so that the pipeline would not -- the                  5 construction would not be stopped. That's their                  6 position in the case, correct?</p> <p>7 A. That was the --</p> <p>8 MS. BOBET: Objection, assumes facts not                  9 in evidence. You may answer.</p> <p>10 A. That was the litigation -- that was the                  11 litigation position. I think that this was -- this                  12 issue was not just playing out in the courtroom,                  13 though. It was playing out as a much more complex                  14 problem on the ground that involved imminent public                  15 safety concerns and -- and other First-Amendment-                  16 protected activities, and large numbers in tribal --                  17 and tribal members and leaders, who were -- who were                  18 clearly upset with this situation.</p> <p>19 So the idea here was to meet that                  20 concern and -- and to -- to -- to inform people of the                  21 decision, but also to inform of other actions, beyond                  22 just the litigation position, that the United States                  23 was going to undertake to address the -- the issues                  24 that had been raised by Standing Rock and by other                  25 tribes about pipeline -- about the Dakota Access</p>	<p style="text-align: right;">Page 65</p> <p>1 evidence, calls for a legal conclusion. You can                  2 answer.</p> <p>3 A. Right. Beyond the -- the legal                  4 consideration, I think that because of the -- I mean,                  5 the history of the relationship between -- between the                  6 federal and state governments, frankly, and private                  7 industry with --</p> <p>8 Q. (BY MR. KERLIN) I hate to cut you off,                  9 Mr. Hornbuckle.</p> <p>10 A. Yeah.</p> <p>11 Q. I don't mean to. We have limited time                  12 here. I only have about 30 minutes left with you, and                  13 so I'm going to have to insist on direct answers to my                  14 questions and not a lot of explanation that may or may                  15 not, and likely isn't, responsive to my question,                  16 okay?</p> <p>17 A. Okay.</p> <p>18 Q. My question --</p> <p>19 A. Could you repeat the question?</p> <p>20 Q. I can, if -- if you would please answer                  21 it.</p> <p>22 So the Department of Justice takes the                  23 position, as they are defending the U.S. Army Corps of                  24 Engineers in their decision-making process, to say,                  25 "Deny the temporary injunction. Construction should</p>

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<p style="text-align: right;">Page 66</p> <p>1 continue."</p> <p>2 The judge rules in their favor, correct,</p> <p>3 and says, "No temporary injunction issued.</p> <p>4 Construction can continue," correct?</p> <p>5 A. Correct.</p> <p>6 Q. And then the Department of Justice</p> <p>7 issues, along with two other agencies, this statement</p> <p>8 that is contradictory to that and says, "Well, the</p> <p>9 judge didn't pause it. Now we, in fact, are going to</p> <p>10 tell the pipeline construction company that it should</p> <p>11 be paused." "Voluntarily paused" is the words that</p> <p>12 are used in this statement, correct?</p> <p>13 MS. BOBET: Objection, misstates</p> <p>14 evidence.</p> <p>15 A. Yes.</p> <p>16 Q. (BY MR. KERLIN) Okay. So the victory</p> <p>17 that the protesters did not get in court, the</p> <p>18 Department of Justice and the Department of Army and</p> <p>19 the Department of the Interior gave them in this</p> <p>20 statement that we're looking at as Exhibit 495 -- 4,</p> <p>21 correct?</p> <p>22 MS. BOBET: Objection, calls for</p> <p>23 speculation, calls for a legal conclusion, and</p> <p>24 argumentative.</p> <p>25 Q. (BY MR. KERLIN) Correct?</p>	<p style="text-align: right;">Page 68</p> <p>1 that clearly many people in the tribe did not agree</p> <p>2 had been addressed adequately.</p> <p>3 So that's -- I think that was -- that</p> <p>4 was the issue.</p> <p>5 Q. Are you finished?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. Do you know whether or not all</p> <p>8 those issues that you just mentioned about whether or</p> <p>9 not the -- that there was an adequate consultation</p> <p>10 process, if all those issues were brought up by the</p> <p>11 Standing Rock Sioux Tribe in the litigation in front</p> <p>12 of Judge Boasberg so that he could consider it before</p> <p>13 he made his ruling?</p> <p>14 A. I don't -- I don't feel like I'm in a</p> <p>15 position to -- to -- to lay out all the legal factors</p> <p>16 that were considered by Judge Boasberg in the</p> <p>17 litigat- -- or to -- to really talk versantly about</p> <p>18 the litigation itself.</p> <p>19 Q. Did Judge Boasberg issue a ruling that</p> <p>20 provided for a voluntary pause on all construction?</p> <p>21 A. I think he -- he issued a ruling based</p> <p>22 on -- on the facts before him in the litigation, so I</p> <p>23 couldn't recall --</p> <p>24 Q. And I think -- and I think you'll agree</p> <p>25 with me that the Department of Justice did not urge</p>
<p style="text-align: right;">Page 67</p> <p>1 A. I -- I would not -- I would not assess</p> <p>2 this and the statement in that way, that it was</p> <p>3 putting forth a contrary -- the position or -- I think</p> <p>4 that it was calling -- calling for a voluntary pause</p> <p>5 while some of these issues were considered.</p> <p>6 And I think the tribe had directly</p> <p>7 challenged whether the -- whether the -- whether the</p> <p>8 Army had -- had done an adequate consultation. And</p> <p>9 that that -- when that is an issue, other -- you know,</p> <p>10 the -- there are -- there are other equities at play</p> <p>11 in the department: One is -- is this trust</p> <p>12 relationship with tribes and making -- ensuring that</p> <p>13 we are consulting appropriately.</p> <p>14 And so I think that that prompted the --</p> <p>15 the need for additional review because of the public</p> <p>16 safety concern. I think that a voluntary pause was</p> <p>17 considered an appropriate thing to call for to</p> <p>18 settle -- to defuse the situation and -- and give us</p> <p>19 more time to -- to deescalate and consider all -- all</p> <p>20 of these issues involved.</p> <p>21 So I don't think it was stating a</p> <p>22 contrary position or reversing. I think it was -- it</p> <p>23 was a strategic maneuver to try to defuse the public</p> <p>24 safety crisis at the time and to also do the right</p> <p>25 thing in terms of addressing some of these concerns</p>	<p style="text-align: right;">Page 69</p> <p>1 Judge Boasberg to issue a ruling that called for a</p> <p>2 voluntary pause of all construction activity. Is that</p> <p>3 correct?</p> <p>4 MS. BOBET: Objection, assumes facts not</p> <p>5 in evidence.</p> <p>6 Q. (BY MR. KERLIN) Is that what the</p> <p>7 Department of Justice was asking Judge Boasberg to do?</p> <p>8 A. I think that -- you know, I think that</p> <p>9 the statement clearly notes our appreciation of the</p> <p>10 opinion, that it -- about the Corps of Engineers'</p> <p>11 compliance with the National Historic Preservation</p> <p>12 Act. So under the particular legal issues at -- at</p> <p>13 play in the litigation under the National Historic</p> <p>14 Preservation Act, the opinion was -- was accepted, but</p> <p>15 it says, however, there were important issues raised</p> <p>16 by the Standing Rock Sioux Tribe, other tribal</p> <p>17 nations, regarding this pipeline, and, you know,</p> <p>18 our -- the process of pipeline decision more</p> <p>19 generally, so --</p> <p>20 Q. Right. All of which Judge -- all of</p> <p>21 what was put before Judge Boasberg in the ongoing</p> <p>22 litigation that the Department of Justice was fighting</p> <p>23 against, right?</p> <p>24 MS. BOBET: Objection, assumes facts not</p> <p>25 in evidence. If we're talking about the substance of</p>

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<p style="text-align: right;">Page 70</p> <p>1 what was happening in the litigation separate from the</p> <p>2 statement here, I think that's outside the scope as</p> <p>3 well. He's welcome to answer in his personal</p> <p>4 capacity.</p> <p>5 MR. KERLIN: I -- I vehemently disagree.</p> <p>6 I believe it goes to the contents of this statement,</p> <p>7 which is clearly part of the topic, and what we</p> <p>8 provided additional guidance to -- to you so that you</p> <p>9 could prepare, on behalf of the United States, a</p> <p>10 witness from the Department of Justice that could</p> <p>11 answer these questions.</p> <p>12 I don't think he's sufficiently answered</p> <p>13 any of my questions -- well, very few of them with</p> <p>14 respect to this topic. I think he's answered a few</p> <p>15 direct that I asked a minute ago and insisted on</p> <p>16 direct answers.</p> <p>17 But I -- I think -- I think I'm going to</p> <p>18 move on to another -- it's the second-to-last</p> <p>19 paragraph in this statement.</p> <p>20 MS. BOBET: And I'll -- I'll -- I</p> <p>21 disagree with the characterizations, but happy to move</p> <p>22 on.</p> <p>23 Did you -- I'm sorry. Is there a</p> <p>24 question pending, or were you just reviewing the --</p> <p>25 the paragraph here?</p>	<p style="text-align: right;">Page 72</p> <p>1 adhere to those principles, which I think is also in</p> <p>2 support of law enforcement and a peace- -- a peaceful</p> <p>3 outcome.</p> <p>4 Q. Okay. But there's no direct statement</p> <p>5 of support that says, you know, "We respect Sheriff</p> <p>6 Kirchmeier and his efforts to maintain law and order</p> <p>7 while there's these protests going on on Corps-managed</p> <p>8 land in Morton County, North Dakota. We support the</p> <p>9 State of North Dakota to try and maintain law and</p> <p>10 order while all of this is going on." None of that</p> <p>11 was included, right?</p> <p>12 A. That's correct.</p> <p>13 Q. Okay. And I think you mentioned</p> <p>14 earlier, but just so that we're clear, no one at North</p> <p>15 Dakota was consulted about the joint statement that</p> <p>16 was going to be issued, correct?</p> <p>17 A. That's correct.</p> <p>18 Q. Did -- did anyone at Department of</p> <p>19 Justice give North Dakota a heads-up that, "Hey, we're</p> <p>20 going to release this joint statement just to make you</p> <p>21 aware because -- you know, so you're aware, for your</p> <p>22 situa- -- situational awareness, that it may or may</p> <p>23 not have an impact on the protest and the protesters"?</p> <p>24 A. Not to my knowledge, but I don't have</p> <p>25 complete knowledge of -- of who was communicated with,</p>
<p style="text-align: right;">Page 71</p> <p>1 MR. KERLIN: Oh, no. I'm sorry. I was</p> <p>2 just trying to get -- if we could bring up the</p> <p>3 second-to-last paragraph on page 2 starting "Finally</p> <p>4 we . . . support."</p> <p>5 MS. BOBET: Got it.</p> <p>6 Q. (BY MR. KERLIN) It says, the last</p> <p>7 sentence, "The Department of Justice and the Interior</p> <p>8 will continue to deploy resources to the United States</p> <p>9 [sic] to help state, local, and tribal authorities,</p> <p>10 and to the communities they serve, better communicate,</p> <p>11 defuse tensions, support peaceful protest, and</p> <p>12 maintain public safety." Do you see that?</p> <p>13 A. I do.</p> <p>14 Q. Okay. No mention of supporting</p> <p>15 North Dakota's State and local law enforcement</p> <p>16 officers to maintain law and order, correct?</p> <p>17 A. I would not say that's -- that's</p> <p>18 correct. I think it -- it says clearly in the</p> <p>19 previous sentence, "any- -- anyone who commits violent</p> <p>20 or destructive acts may face criminal sanctions from</p> <p>21 federal, tribal, state, or local authorities."</p> <p>22 So that was very intentionally a</p> <p>23 deterrent message to deter criminal activity and to</p> <p>24 promote, in the previous sentence before that, the</p> <p>25 principles of nonviolence, encouraging everyone to</p>	<p style="text-align: right;">Page 73</p> <p>1 you know, prior to the release.</p> <p>2 Q. Is the Department of Justice aware that,</p> <p>3 after this statement was issued, that the protesters</p> <p>4 viewed it as a victory?</p> <p>5 MS. BOBET: Objection, assumes facts not</p> <p>6 in evidence, and calls for speculation.</p> <p>7 Q. (BY MR. KERLIN) Okay. Let's go ahead</p> <p>8 and put that into evidence. You don't have to answer</p> <p>9 that question. I'm going to ask you again in about</p> <p>10 three minutes.</p> <p>11 Can we bring up ARMY 117979?</p> <p>12 Okay. I guess I need to flip back to</p> <p>13 494 just to point out one thing, and that's the timing</p> <p>14 of this release.</p> <p>15 Okay. So the date of -- of this email,</p> <p>16 September 9, 2016, 1:47 p.m. Do you see that?</p> <p>17 Okay. I want to keep moving forward, so</p> <p>18 I'm going to go back to 117979. We're going to mark</p> <p>19 it as the next exhibit. I believe we're up to</p> <p>20 Exhibit 853 [sic].</p> <p>21 (Deposition Exhibit 854 was remotely</p> <p>22 introduced.)</p> <p>23 Q. It's an email from you, again, to a</p> <p>24 distribution list that includes individuals at the</p> <p>25 Army, of course the Department of Justice, and the</p>



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<p style="text-align: right;">Page 74</p> <p>1 Department of Interior. Can you see that?</p> <p>2 A. Yes.</p> <p>3 Q. You state, "Interesting article . . . ."</p> <p>4 Again, this is -- the subject of the -- you know, the</p> <p>5 "Re" line, it's "Final Drafts of Statements." You're</p> <p>6 sending this out, and it says, "Interesting article in</p> <p>7 the Atlantic on the legal case." Do you see that?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. So this is after the statement</p> <p>10 had been -- I guess this is shortly before the</p> <p>11 statement had been issued, right? It's 12:35 p.m.</p> <p>12 A. Yes.</p> <p>13 Q. Okay.</p> <p>14 A. I see it.</p> <p>15 Q. Just to understand the timeline a little</p> <p>16 better, so we had the -- I think you said you first</p> <p>17 saw a draft on either the 7th or 8th of September,</p> <p>18 correct?</p> <p>19 A. Correct.</p> <p>20 Q. That statement was ready, had been -- in</p> <p>21 other words, you had it in the ready, and you were</p> <p>22 waiting for the Court's ruling, right? And then was</p> <p>23 the idea that, after the ruling came out, that the</p> <p>24 statement -- the joint statement could immediately be</p> <p>25 released?</p>	<p style="text-align: right;">Page 76</p> <p>1 product. I'll instruct the witness not to talk about</p> <p>2 the -- the substance of that nonfinal statement.</p> <p>3 MR. KERLIN: Ms. Bobet, has that been</p> <p>4 produced in this case?</p> <p>5 MS. BOBET: Are you asking me, of the</p> <p>6 300,000-some-odd documents, off the top of my head? I</p> <p>7 don't know what's been produced as it's -- I assume</p> <p>8 that it would be privileged in many of its draft</p> <p>9 forms, so if it's been produced, I would assume it's</p> <p>10 been -- it's been produced in a redacted form with an</p> <p>11 appropriate privilege redaction.</p> <p>12 MR. KERLIN: Yeah, I don't think it has.</p> <p>13 I've personally gone through all the emails</p> <p>14 Mr. Hornbuckle was on around this time period.</p> <p>15 Q. (BY MR. KERLIN) Mr. Hornbuckle, were</p> <p>16 you included on an email that included the draft</p> <p>17 statements on either September 7 or September 8 of</p> <p>18 2016? And I'm talking about the alternative one that</p> <p>19 would -- if Boasberg ruled for the tribe.</p> <p>20 A. I don't recall. I mean, there were a</p> <p>21 lot of emails on this, and so -- and -- and the --</p> <p>22 again, the statements themselves, I don't know how</p> <p>23 they would -- how -- how much substantively different.</p> <p>24 It's just that I think that the -- the step -- it's</p> <p>25 main -- it probably had to do with just explaining</p>
<p style="text-align: right;">Page 75</p> <p>1 A. Yes.</p> <p>2 Q. Was there more than one joint statement?</p> <p>3 In other words, was there a statement that was</p> <p>4 prepared in case Judge Boasberg ruled in favor of the</p> <p>5 Corps, and then also one that was prepared in case</p> <p>6 Judge Boasberg ruled in favor of the Standing Rock</p> <p>7 Sioux Tribe?</p> <p>8 A. Yes, I believe there was two statements,</p> <p>9 but that -- that is a -- that's a normal trade craft,</p> <p>10 is that if you want to be prepared for an immediate</p> <p>11 response to a ruling, you need to -- to be prepared</p> <p>12 for either scenario.</p> <p>13 Q. Okay. Were these statements prepared at</p> <p>14 the same time or kind of together? I mean, obviously</p> <p>15 not at the same moment, but --</p> <p>16 A. I think throughout the course of the</p> <p>17 8th, working on -- working on both contingencies.</p> <p>18 Q. Okay. I don't think I've seen a copy of</p> <p>19 those statements, but it's possible that it might</p> <p>20 exist and has been produced in this litigation.</p> <p>21 Can you tell me what the alternative</p> <p>22 statement said?</p> <p>23 MS. BOBET: I'll object to the extent</p> <p>24 the question is asking about an unfinal, draft version</p> <p>25 that may reflect attorney comments or -- or work</p>	<p style="text-align: right;">Page 77</p> <p>1 what had actually happened.</p> <p>2 But -- but we also wanted to communicate</p> <p>3 that we were going to have these consultations, that</p> <p>4 we wanted to encourage nonviolence and all -- and all</p> <p>5 of that, so I think that the intent was still to just</p> <p>6 address the situation publicly and communicate</p> <p>7 effectively.</p> <p>8 Q. Got it. Do you -- did you lay eyes</p> <p>9 on -- do you recall seeing two statements, one that</p> <p>10 was the one that was ultimately released, and one that</p> <p>11 was ready to be released if the Court ruled a</p> <p>12 differently -- a different way than it did?</p> <p>13 A. I -- I -- I believe so, but I -- I</p> <p>14 can't -- you know, I don't have a photographic memory</p> <p>15 of these -- all these statements that day.</p> <p>16 Q. Understood. Okay. Let's -- let's go to</p> <p>17 MYERS 10033, please. And we'll label it as 854.</p> <p>18 THE REPORTER: I believe we had a 853</p> <p>19 before, and that last one was 854.</p> <p>20 MS. HYMEL: I agree.</p> <p>21 MR. KERLIN: Okay. So what am I up to</p> <p>22 now?</p> <p>23 MS. HYMEL: 855.</p> <p>24 MR. KERLIN: 855.</p> <p>25 (Deposition Exhibit 855 was remotely</p>

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<p style="text-align: right;">Page 78</p> <p>1 introduced.)</p> <p>2 Q. (BY MR. KERLIN) An email that is an</p> <p>3 email that you sent, okay?</p> <p>4 A. Okay.</p> <p>5 Q. All right. I want to go to the end and</p> <p>6 work my way up. Okay. This is the last one. It's an</p> <p>7 email from Sam Hirsch, a wide distribution list, a</p> <p>8 number of folks. In the interest of time, we're not</p> <p>9 going through it.</p> <p>10 The subject is "Judge Boasberg's</p> <p>11 Order/Opinion and the Joint Army/Interior/Justice</p> <p>12 Statement," okay? And the time and date is</p> <p>13 September 9 at 2:52 p.m., okay?</p> <p>14 Hirsch says, "Attached please find Judge</p> <p>15 Boasberg's Order and Memorandum Opinion denying the</p> <p>16 plaintiff Standing Rock Sioux Tribe's motion for a</p> <p>17 preliminary injunction entirely.</p> <p>18 "Attached also please find DOJ's version</p> <p>19 of the Joint Statement which we will send out</p> <p>20 momentarily. My understanding is that the Army and</p> <p>21 the Interior will send out an identical statement,</p> <p>22 each on their own letterhead." Do you see it?</p> <p>23 A. I see it.</p> <p>24 Q. Okay. So then we go up an email;</p> <p>25 there's an individual named Dan Utech. Do you see</p>	<p style="text-align: right;">Page 80</p> <p>1 or statements or -- or info. They're info -- for</p> <p>2 information.</p> <p>3 So that this was a situation that had</p> <p>4 garnered a tremendous, you know, public interest</p> <p>5 and -- and -- and an outcry, and so it would not be</p> <p>6 unusual for us to let folks know in the administration</p> <p>7 of what we were doing. But the statement itself was</p> <p>8 not in concert with the White House. It was a joint</p> <p>9 statement with those three departments.</p> <p>10 Q. Okay. But it was in concert with the</p> <p>11 Department of the Interior and the Department of the</p> <p>12 Army?</p> <p>13 A. Correct.</p> <p>14 Q. Okay. And then if we go up one email,</p> <p>15 you're responding to Mr. Utech and everyone else. "We</p> <p>16 are sending it now," correct?</p> <p>17 A. Uh-huh.</p> <p>18 Q. All right. And if we go to the top,</p> <p>19 that's -- that's your email with a link to the joint</p> <p>20 statement.</p> <p>21 A. Right.</p> <p>22 Q. Okay. All right. That was 855.</p> <p>23 Let's -- let's jump to 856, please. I</p> <p>24 mean -- I'm sorry -- we're going to call it 856. It's</p> <p>25 MYERS 10036.</p>
<p style="text-align: right;">Page 79</p> <p>1 that?</p> <p>2 A. Yes.</p> <p>3 Q. Do you know who Dan Utech is?</p> <p>4 A. I believe he was -- he was with the</p> <p>5 White House, Executive Office of the President.</p> <p>6 That's what the line says, and I vaguely recall him.</p> <p>7 I don't know him.</p> <p>8 Q. Okay. And the request comes in from</p> <p>9 Mr. Utech on behalf of the Executive Office of the</p> <p>10 President. "Can you let us know when your statement</p> <p>11 is actually out," question mark. "Thanks." Do you</p> <p>12 see that?</p> <p>13 A. Yep. I see it.</p> <p>14 Q. Is this again kind of consistent with</p> <p>15 what you were saying earlier, if there's a joint</p> <p>16 statement going out, we want to make sure that the</p> <p>17 Department of the Interior, the Department of the --</p> <p>18 of Justice, the Department of the Army, also Executive</p> <p>19 Office of the President are all on the same page,</p> <p>20 so -- I think you described it as a partnership, so</p> <p>21 the federal government is speaking with one voice?</p> <p>22 A. I -- not necessarily with regard to the</p> <p>23 Executive Office of the President. That would be --</p> <p>24 communications with the Executive -- with the</p> <p>25 White House are about when -- about department actions</p>	<p style="text-align: right;">Page 81</p> <p>1 (Deposition Exhibit 856 was remotely</p> <p>2 introduced.)</p> <p>3 Q. Okay. This is an email from you, and it</p> <p>4 just has the link to the statement. Do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. This is 1:08 p.m. You're</p> <p>7 responding to Karen Diver. Do you know who Karen</p> <p>8 Diver is?</p> <p>9 A. Again, another -- another White House</p> <p>10 official. I don't -- I don't recall.</p> <p>11 Q. Sure. Fair enough.</p> <p>12 Let's go to the next page. We can look</p> <p>13 at -- she sent an email, and then this is the --</p> <p>14 the -- her text of her email is "Please confirm Press</p> <p>15 Release publication as soon as possible," and then it</p> <p>16 has her signature block, which -- which indicates</p> <p>17 she's Special Assistant to the President for Native</p> <p>18 American Affairs. Do you see that?</p> <p>19 A. Yeah. That makes sense. Yeah.</p> <p>20 Q. Okay. And so then you're sending it to</p> <p>21 her as well, a different White House official,</p> <p>22 providing a link to the joint statement that was</p> <p>23 issued, correct?</p> <p>24 A. Correct.</p> <p>25 Q. Okay. Let's go to MYERS 45235.</p>



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<p style="text-align: right;">Page 82</p> <p>1 (Deposition Exhibit 857 was remotely 2 introduced.)</p> <p>3 Q. All right. I want to go to -- to your 4 email. There's a -- well, we'll just have to start at 5 the top. So you sent an email Friday, September 9, 6 2016. It's 1:55 p.m. The title of it is "Standing 7 Rock - Possible state press conference at 11:30 8 central."</p> <p>9 You can go to the end again. Nekia 10 Hackworth from the -- Senior Counsel at the Office of 11 the Deputy Attorney General is indicating that there's 12 going to be word -- that there's going to be a press 13 conference at 11:30.</p> <p>14 Robert Perry then weighs in at the top 15 of that.</p> <p>16 If we work our way up, eventually we get 17 to your email. I guess it's the first one, the -- so 18 there -- September 9 at 2:49 p.m. from Wyn Hornbuckle. 19 So let's start at the bottom of that page. I'm sorry. 20 It says, "See below . . . ." You got it?</p> <p>21 THE REPORTER: Is this 857?</p> <p>22 MR. KERLIN: I believe so. It would be 23 the next.</p> <p>24 MS. HYMEL: 56.</p> <p>25 MR. KERLIN: I'm sorry. It's 857,</p>	<p style="text-align: right;">Page 84</p> <p>1 direct them.</p> <p>2 Q. Okay. Got it. Okay. Let's go 3 to MYERS 41890. Ah, we're -- we're going to skip 4 that.</p> <p>5 Let's go to MYERS 44231. I'm sorry. 6 And that will be Exhibit 858.</p> <p>7 (Deposition Exhibit 858 was remotely 8 introduced.)</p> <p>9 Q. Okay. Mr. Hornbuckle, there's a number 10 of things in here I would like to talk about. It's a 11 rather lengthy, long -- it's a rather lengthy 12 document. So what I would like to do -- well, 13 let's -- hmm.</p> <p>14 We're going to briefly go through it 15 from the -- you've basically been forwarding -- it 16 looks like you've been forwarding emails and adding 17 things to it. So it's an email that we've looked at 18 earlier if we go to the end. Okay. We looked at this 19 earlier. Nekia Hackworth, "Good morning, everyone. 20 FYSA, we received word" that there's going to be this 21 press conference, all right?</p> <p>22 And then I want to work our way up 23 because I don't have any questions about these, but 24 it's the document we looked at earlier, in part. 25 Then there's a forward of a -- of a --</p>
<p style="text-align: right;">Page 83</p> <p>1 right? 857.</p> <p>2 Q. (BY MR. KERLIN) "See below a query from 3 Reuters that word is going around that 'monitors' from 4 DOJ are on the ground in North Dakota as requested by 5 the Great Plains Council.</p> <p>6 "I would like to use the following 7 background statement this afternoon to describe the 8 DOJ presence. Let me know if any concerns asap.</p> <p>9 "I can tell you, on background, that 10 'monitors' would be inaccurate. We do have DOJ 11 personnel from Community Relations Service, the COPS 12 Office, the U.S. Attorney's Office, Office of Tribal 13 Justice, and others on the ground facilitating 14 communication, and working with tribal, state, and 15 local authorities to defuse tensions, support peaceful 16 protest, and maintain public safety." Do you see 17 that?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. You talked about, I think, the 20 COPS, Community Relations. You mentioned -- I don't 21 think you talked about the U.S. Attorney's Office 22 previously when it was "support." Is that referring 23 to Chris Myers?</p> <p>24 A. Well, to the U.S. -- the U.S. -- to him 25 and his staff as he saw -- you know, as he would</p>	<p style="text-align: right;">Page 85</p> <p>1 of a news article by you. This is Friday, 2 September 9, at 3:59 p.m., is the date of your email, 3 and you've attached this -- this article, okay?</p> <p>4 A. Uh-huh.</p> <p>5 Q. Then I want to keep going up. Then you 6 send a link to another article about 30 minutes later.</p> <p>7 And then we go to the prior -- if we 8 go -- yeah, I think it's -- all the rest of it is -- 9 is attachments to -- or the part that you've included 10 to the top email, okay?</p> <p>11 Okay. This is your email. This is now 12 Monday, September 12, so it would be the Monday after 13 the -- the joint statement went out on the 9th.</p> <p>14 A. Okay.</p> <p>15 Q. In your email, it says "Press Clips," 16 and then it -- it has joint statements from the 17 Department of Justice, Army, Interior, okay? You have 18 these different news articles, all right?</p> <p>19 I want to talk to you about one of them. 20 It's the PBS NewsHour. It's the September 10, 2016, 21 that you've included in your email in your 22 distribution to everyone on the distribution list.</p> <p>23 Okay. If we -- yeah, if we go to the -- 24 I'm sorry. If we go to the actual -- I'm sorry, at 25 the top of that page -- let's go up one page. Yep,</p>

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<p style="text-align: right;">Page 86</p> <p>1 just the start of the article, "The smoldering fires 2 had been burning . . . ."</p> <p>3 Yeah, I'm sorry, just that whole part. 4 I -- I don't need to get that granular.</p> <p>5 "In his hand was an official statement 6 released about an hour earlier," okay, "by the 7 U.S. Department of Justice. It regarded a lawsuit by 8 the Standing Rock Sioux Indian Tribe against the 9 U.S. Army Corps of Engineers. The tribe claimed the 10 government agency inadequately consulted . . . them 11 about a multibillion-dollar pipeline project." Are 12 you with me?</p> <p>13 A. Yep.</p> <p>14 Q. Okay. Skip down to the next paragraph. 15 The second sentence says, "Anticipation over U.-" -- 16 well, it mentioned -- let's just start with the 17 beginning of it. I'm sorry.</p> <p>18 "[Over] two hundred demonstrators, 19 mostly people who had been camping for weeks near the 20 Sacred Circle, had gathered there to eat and wait. 21 Anticipation over U.S. District Judge Boasberg's 22 ruling in the case had been mounting, even though the 23 tribe's chairman, David Archambault II, had tried to 24 downplay the significance of the decision. '[What] 25 happens, there's going to be an appeal process,' said</p>	<p style="text-align: right;">Page 88</p> <p>1 the joint statement, issued in part by the Department 2 of Justice, as a victory to their cause?</p> <p>3 MS. BOBET: I'll -- I'll object. This 4 is outside the scope of the topic and what we 5 understood would be asked about, and also that it 6 calls for speculation. But Mr. Hornbuckle may answer 7 for himself.</p> <p>8 A. I think that the articles reflect -- the 9 articles which were written by the press, you know, 10 reflect a particular glimpse into the way some people 11 perceived -- perceived it. So some may have perceived 12 it as a victory, a temporary victory, but others 13 may -- may not have.</p> <p>14 But, overall, I think that the -- it was 15 received as -- it was not a -- it was not a -- 16 something that was going to escalate the situation. So I 17 think that that's -- that was my perception of what 18 was going on there, is things were settling down; 19 people thought they were being heard, and -- and so -- 20 in that the government was hearing the concerns of the 21 tribes and -- and the protesters in -- in this regard, 22 in -- in taking the position and releasing this 23 statement.</p> <p>24 How -- how everyone viewed it, I 25 don't -- I can't say.</p>
<p style="text-align: right;">Page 87</p> <p>1 the chairman on Thursday before the ruling. Now, 2 Eagle stood in the same spot, reading the DOJ 3 statement." Okay?</p> <p>4 If we go to the next paragraph, it says, 5 "'Construction of the pipeline on Army Corps land 6 bordering or under Lake Oahe will not go forward at 7 this time,' he read aloud. Then he paused, looked 8 towards the crowd over the rim of his reading glasses 9 and declared, 'You Stopped It,'" okay?</p> <p>10 According to this article, he was 11 telling all the protesters that they were able to stop 12 the pipeline construction. Do you see that?</p> <p>13 A. I see it. I see the quote, yeah.</p> <p>14 Q. And then the next sentence says, "Men 15 hooted and shot single fists into the air. Women 16 lulu'ed calls of victory. As Eagle read on, the 17 celebration grew. Many people did their best to fight 18 off tears." Do you see that?</p> <p>19 A. Yeah.</p> <p>20 Q. Okay. And this is an article that you 21 disseminated to a number of individuals, I believe, 22 mostly at the Department of Justice; it looks like 23 also at the FBI.</p> <p>24 Based on this article, would you agree 25 with me that at least some of the protesters viewed</p>	<p style="text-align: right;">Page 89</p> <p>1 MR. KERLIN: Object to the nonresponsive 2 portion.</p> <p>3 Q. (BY MR. KERLIN) Mr. Hornbuckle, did you 4 ever go out to North Dakota to see the protests or the 5 protest response?</p> <p>6 A. I did not.</p> <p>7 Q. So when you say you had some basis on 8 it, where were you getting that information as far as 9 what was going on out at the protest sites? News 10 articles?</p> <p>11 A. Actually, I believe the OTJ director may 12 have been there on the ground at the time; CRS, I 13 believe, may have been -- had personnel out there; 14 and -- and, of course, our -- I don't know if the 15 U.S. Attorney had people, but they were certainly 16 aware of what was going on.</p> <p>17 So some things were being received from 18 the media, which was also observing the situation, but 19 also through some firsthand accounts as well.</p> <p>20 Q. Can we pull up USACE 84181. We'll mark 21 this as the next exhibit, which I think we're up to 22 859.</p> <p>23 (Deposition Exhibit 859 was remotely 24 introduced.)</p> <p>25 Q. It's an email from Eileen Williamson. I</p>

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<p style="text-align: right;">Page 90</p> <p>1 don't believe you're on the email, Mr. Hornbuckle, but</p> <p>2 your name does appear on the -- in the email.</p> <p>3 If we go to the second paragraph. It</p> <p>4 says, "I resent the joint statement on Friday after it</p> <p>5 was released by the U.S. DOJ because we have contacts</p> <p>6 for several small newspapers in North and South Dakota</p> <p>7 that are not serviced by most press release</p> <p>8 distribution services, like Vocus, PR Newswire,</p> <p>9 BusinessWire, et cetera. (It was about 200 contacts).</p> <p>10 In that statement, I noted that 'The U.S. Army</p> <p>11 Corps of Engineers is referring all queries related to</p> <p>12 the Dakota Access Pipeline to the U.S. Department of</p> <p>13 Justice Contact: Wyn Hornbuckle . . . ." It's got</p> <p>14 your phone number and your email address, okay?</p> <p>15 The date of this -- this is the Monday</p> <p>16 after the press release. Did you receive, on behalf</p> <p>17 of the Department of Justice or the U.S. Army Corps of</p> <p>18 Engineers, as it was directing them to you, questions,</p> <p>19 requests for comments about the joint statement that</p> <p>20 was issued?</p> <p>21 A. I don't remember the specific traffic,</p> <p>22 but undoubtedly there were ongoing media inquiries</p> <p>23 that were coming to -- to the department on this</p> <p>24 issue. So I -- I don't recall any other responsive --</p> <p>25 responsive statements beyond what we had -- we had put</p>	<p style="text-align: right;">Page 92</p> <p>1 MR. KERLIN: Let's take a quick break.</p> <p>2 And if I can get a check on the time after we go off</p> <p>3 the record.</p> <p>4 THE VIDEOGRAPHER: Going off the record.</p> <p>5 The time is 6:02 p.m. UTC, 11:02 a.m. Mountain.</p> <p>6 (Recess taken 11:02 a.m. to 11:14 a.m.</p> <p>7 Mountain Standard Time.)</p> <p>8 THE VIDEOGRAPHER: We're back on the</p> <p>9 record. The time is 6:14 p.m. UTC, 11:14 a.m.</p> <p>10 Mountain.</p> <p>11 Q. (BY MR. KERLIN) All right,</p> <p>12 Mr. Hornbuckle, we're back after a short break. Able</p> <p>13 to continue?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. Anything that you would change</p> <p>16 about your prior testimony or add to it that we</p> <p>17 haven't already discussed?</p> <p>18 A. No.</p> <p>19 Q. Okay. If we could bring up Exhibit 821.</p> <p>20 Okay. This is another joint statement. It's on the</p> <p>21 Department of Justice letterhead. Can you see that on</p> <p>22 your screen?</p> <p>23 A. Yep, I see it.</p> <p>24 Q. Okay. Do you recall this joint</p> <p>25 statement?</p>
<p style="text-align: right;">Page 91</p> <p>1 out after the ruling. But --</p> <p>2 Q. Okay.</p> <p>3 A. -- it was -- yeah, that's not uncommon.</p> <p>4 I'm -- I'm often as the -- as sort of the client -- as</p> <p>5 the lawyer for the government, often I am the person</p> <p>6 that -- that our client agencies would refer me to on</p> <p>7 various issues.</p> <p>8 Q. Okay. And then would you address issues</p> <p>9 regarding -- I mean, would you be the -- excuse me --</p> <p>10 the point of contact consistent with what this is --</p> <p>11 this stated, that -- for the U.S. Corps of Engineers</p> <p>12 regarding queries about this statement?</p> <p>13 A. I would -- I would be for -- for the</p> <p>14 media. I -- I -- I don't think that I would -- our</p> <p>15 office doesn't have the capacity to answer, you know,</p> <p>16 everyone who has questions.</p> <p>17 For instance, the department might</p> <p>18 receive -- if it was calls from tribes or tribal</p> <p>19 members, that might end up with the Office of Tribal</p> <p>20 Justice, or if it was people calling to report civil</p> <p>21 rights concerns, that might be, you know, funneled to</p> <p>22 a different place.</p> <p>23 So this is primarily about handling --</p> <p>24 triaging the media inquiries.</p> <p>25 Q. Okay. Sounds good.</p>	<p style="text-align: right;">Page 93</p> <p>1 A. Yes, I recall.</p> <p>2 Q. Were you involved with the process of</p> <p>3 creating it?</p> <p>4 A. Yes, I was.</p> <p>5 Q. The same types of questions that we</p> <p>6 talked about with the previous joint statement: Do</p> <p>7 you know which department kind of took the laboring</p> <p>8 oar to prepare the first draft of this statement?</p> <p>9 A. Well, I reviewed my own email traffic,</p> <p>10 and it was me. I -- I knew that we, again, would</p> <p>11 have, you know, a ruling coming from the Court, and so</p> <p>12 thought it would be in the Department's interest that</p> <p>13 we prepare for that and to have a public statement</p> <p>14 prepared. So -- so I took the first cut at it, I</p> <p>15 believe, and then sent it around for review.</p> <p>16 Q. Okay. Did you send it internal to the</p> <p>17 Department of Justice or did -- did the</p> <p>18 distribution -- I mean, did you send it to -- to</p> <p>19 individuals outside of the Department of Justice?</p> <p>20 A. No, I -- I believe I sent it only</p> <p>21 to within, which would be my normal practice.</p> <p>22 Q. Okay. If we pull up the --</p> <p>23 A. I mean, I don't know if -- the Army</p> <p>24 Corps was also probably involved in reviewing it at</p> <p>25 some point. I don't recall being the person who</p>

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<p style="text-align: right;">Page 94</p> <p>1 distributed it to them, but it's -- it's possible.</p> <p>2 Q. Okay. If we pull up -- one, two,</p> <p>3 three -- the fourth paragraph that starts "The Army</p> <p>4 continues." Okay. Did you have any specific</p> <p>5 discussions with the Army about its review process</p> <p>6 that was ongoing?</p> <p>7 A. I don't have -- recall having</p> <p>8 substantive discussions about the -- their review, and</p> <p>9 probably would defer to other folks who were in touch</p> <p>10 with them on that from our department leadership.</p> <p>11 Q. And then it says, "In the interim" --</p> <p>12 the second sentence, "In the interim, the Army will</p> <p>13 not authorize constructing the Dakota Access Pipeline</p> <p>14 on Corps lands bordering or under Lake Oahe. We</p> <p>15 repeat our request that the pipeline company</p> <p>16 voluntarily pause all construction activity within</p> <p>17 20 miles east or west of Lake Oahe." Do you see that?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. So I guess what -- what I just</p> <p>20 want to make sure I understand, the Department of</p> <p>21 Justice is not -- I mean --</p> <p>22 Let me see if I can ask it this way:</p> <p>23 It's the U.S. Army Corps of Engineers that would be</p> <p>24 the entity that would have oversight of this pipeline</p> <p>25 crossing at --</p>	<p style="text-align: right;">Page 96</p> <p>1 THE REPORTER: Yes.</p> <p>2 MR. KERLIN: Thank you.</p> <p>3 (Deposition Exhibit 860 was remotely</p> <p>4 introduced.)</p> <p>5 Q. (BY MR. KERLIN) Okay. You're on some</p> <p>6 of these emails but not all, so I'm going to -- I'm</p> <p>7 not going to ask you questions about the -- about the</p> <p>8 emails that are -- that are -- you're obviously not</p> <p>9 on. So what I would like to do is go to the</p> <p>10 second-to-last page. I guess if we just start at the</p> <p>11 end, is probably the best place.</p> <p>12 There's an email from you to Blake</p> <p>13 Nicholson. Do you know who Blake Nicholson is?</p> <p>14 A. Just -- I maybe recall this, but I saw</p> <p>15 an earlier email that he was with the Associated</p> <p>16 Press. Is that correct?</p> <p>17 Q. Yes, I believe so, but --</p> <p>18 A. Yes, I -- I -- I have some recollection</p> <p>19 of dealing with him during the time.</p> <p>20 Q. Okay. And you state, "I understand you</p> <p>21 were asking for a response regarding the letter to the</p> <p>22 Obama administration from North Dakota law</p> <p>23 enforcement." And you say, "Here's a statement</p> <p>24 attributable to me, a Department of Justice spokesman,</p> <p>25 if you can still work it in."</p>
<p style="text-align: right;">Page 95</p> <p>1 I guess what I'm trying to understand is</p> <p>2 why did someone at the Department of Justice prepare a</p> <p>3 joint statement that includes statements about what</p> <p>4 the Army will or will not do? Can you provide any</p> <p>5 insight about that?</p> <p>6 A. Again, it was -- it was the -- it was in</p> <p>7 this voice of all three departments. That was the</p> <p>8 intent of the -- the -- the release. Very similar to</p> <p>9 September 9, it was intended to -- to just inform the</p> <p>10 public that this would -- of what happened, what the</p> <p>11 Court decided, where we are in the process, and</p> <p>12 what -- and what -- and that the Army's review</p> <p>13 continued, and that -- you know, and -- and also sort</p> <p>14 of a time -- an indication of that it would -- hopes</p> <p>15 to conclude its review soon, and -- and to just</p> <p>16 repeat.</p> <p>17 So in other words, this was very much a</p> <p>18 re- -- a restatement of where we stood in this process</p> <p>19 to -- and to communicate again in the wake of another</p> <p>20 judicial decision.</p> <p>21 Q. Okay. Okay. Got it.</p> <p>22 Let's -- let's take a look at -- it's</p> <p>23 North Dakota -- I'm sorry, ND 256324. And I guess</p> <p>24 we're going to -- make sure I have this correct,</p> <p>25 Exhibit 860? Is that right?</p>	<p style="text-align: right;">Page 97</p> <p>1 And I'm not going to go through</p> <p>2 everything that you included there, but I just want to</p> <p>3 point out the date, December 12, 2016. Okay. So the</p> <p>4 protest had been going on for three or four months,</p> <p>5 okay?</p> <p>6 And then Blake responds. So you have</p> <p>7 your statement, but that's not really the focus of</p> <p>8 this. It's -- I think you'll understand where I'm</p> <p>9 going here in a minute.</p> <p>10 If we go to the prior email. So Blake</p> <p>11 responds to you a day later on the 13th. "Thank you.</p> <p>12 Can you please elaborate on some things?</p> <p>13 "ND law enforcement has specifically</p> <p>14 requested 100 Border Patrol agents and members of the</p> <p>15 U.S. Marshals Service Special Operations Group, along</p> <p>16 with an unspecified amount of financial assistance.</p> <p>17 Will those requests be considered?"</p> <p>18 And then he asks, "What is meant by the</p> <p>19 phrase 'committed to supporting local law</p> <p>20 enforcement.' Support in what form, exactly?</p> <p>21 "What, exactly, are 'community policing</p> <p>22 resources'?</p> <p>23 "What are Community Relations Service</p> <p>24 conciliators? What do they do? How many were/have</p> <p>25 been deployed to North Dakota, and when?"</p>

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<p style="text-align: right;">Page 98</p> <p>1           Some of this we've talked about, but I</p> <p>2   want to go back to the -- if we go back one more page,</p> <p>3   we have your response to it. And with respect -- with</p> <p>4   respect to the question from the -- from -- from</p> <p>5   Mr. Nicholson with the AP about the request for Border</p> <p>6   Patrol and U.S. Marshals Service SOG, or Special</p> <p>7   Operations Group, I think your first bullet point</p> <p>8   addresses that, okay, and so I want to ask you about</p> <p>9   it.</p> <p>10           "The Department continues to hold the</p> <p>11   view that additional law enforcement resources on the</p> <p>12   ground could serve to escalate, rather, than</p> <p>13   deescalate tensions." Do you see that?</p> <p>14           A.   Yes.</p> <p>15           Q.   So --</p> <p>16           MS. BOBET: I'm -- I'm so sorry to</p> <p>17   interrupt. I just want to make it clear. I don't --</p> <p>18   this is a couple of months after the October 10</p> <p>19   statement, so I just want to know if we're on a</p> <p>20   diff- -- different topic now or if this is in his</p> <p>21   personal capacity.</p> <p>22           MR. KERLIN: No. This is "withhold law</p> <p>23   enforcement" support or "provide."</p> <p>24           MS. BOBET: Okay. Topic 20. Got it.</p> <p>25           MR. KERLIN: Yep.</p>	<p style="text-align: right;">Page 100</p> <p>1   specific about them, and -- yeah.</p> <p>2           Q.   Okay. And then I think the last</p> <p>3   document that I have, it's MYERS 40535.</p> <p>4           MS. HYMEL: Paul, I'm looking, but I</p> <p>5   don't think I have that.</p> <p>6           MR. KERLIN: MYERS, and then it's three</p> <p>7   leading zeros, 40535?</p> <p>8           MS. BOBET: I don't see that in the</p> <p>9   materials we got just before the deposition either.</p> <p>10           I think we're also at the end of the</p> <p>11   State's allotted time here.</p> <p>12           MR. KERLIN: Okay.</p> <p>13           Q.   (BY MR. KERLIN) All right.</p> <p>14   Mr. Hornbuckle, I appreciate your time. Have I been</p> <p>15   respectful and courteous to you in this deposition?</p> <p>16           A.   Yes, sir.</p> <p>17           MR. KERLIN: Okay. With that, the State</p> <p>18   would pass the witness.</p> <p>19           MS. BOBET: All right. I know we just</p> <p>20   took a break, but I'll take an additional five or so</p> <p>21   minutes just to look over my notes.</p> <p>22           I'll have a couple of follow-up</p> <p>23   questions for you, Mr. Hornbuckle, and then we can let</p> <p>24   you get on with your day.</p> <p>25           THE DEPONENT: Okay.</p>
<p style="text-align: right;">Page 99</p> <p>1           MS. BOBET: Thank you.</p> <p>2           MR. KERLIN: Right.</p> <p>3           Q.   (BY MR. KERLIN) So Mr. -- the AP is</p> <p>4   asking for clarity about North Dakota's request for</p> <p>5   the U.S. Marshals SOG group and the Border Patrol</p> <p>6   agents.</p> <p>7           Is -- is -- your response to him, was</p> <p>8   that the position of the Department of Justice still,</p> <p>9   in December 13 of 2016, that it continues to hold the</p> <p>10   view that additional law enforcement resources on the</p> <p>11   ground can serve to escalate rather than to deescalate</p> <p>12   tensions?</p> <p>13           A.   Yes. I think that's -- I wouldn't have</p> <p>14   said it if it wasn't the Department's position.</p> <p>15           Q.   I understand that, but by that, we can</p> <p>16   take it to mean that the request for the U.S. Marshals</p> <p>17   SOG group, as well as Border Patrol agents, those are</p> <p>18   denied, right?</p> <p>19           A.   I -- that -- those -- those -- those</p> <p>20   resources were not deployed, so I -- I -- I don't -- I</p> <p>21   don't know the decision -- precise decision-making</p> <p>22   process behind that.</p> <p>23           Q.   Okay.</p> <p>24           A.   So I was trying to explain here what --</p> <p>25   some of the resources that have been deployed, be more</p>	<p style="text-align: right;">Page 101</p> <p>1           THE VIDEOGRAPHER: Going off the record,</p> <p>2   the time is 6:26 p.m. UTC, 11:26 a.m. Mountain.</p> <p>3           (Recess taken 11:26 a.m. to 11:34 a.m.</p> <p>4   Mountain Standard Time.)</p> <p>5           THE VIDEOGRAPHER: We're back on the</p> <p>6   record. The time is 6:34 p.m. UTC, 11:34 a.m.</p> <p>7   Mountain.</p> <p>8           EXAMINATION</p> <p>9   BY MS. BOBET:</p> <p>10           Q.   All right. We are back after a short</p> <p>11   break. I'll thank you now, Mr. Hornbuckle, for -- for</p> <p>12   your time in the deposition.</p> <p>13           Just a few, kind of, follow-up matters.</p> <p>14           You -- you were asked earlier about the</p> <p>15   Department of Justice, Main Justice's decision</p> <p>16   regarding requests to deploy law enforcement</p> <p>17   resources. Do you recall that line of questioning?</p> <p>18           A.   Yes.</p> <p>19           Q.   And I think you explained, correct me if</p> <p>20   I'm -- I'm not summarizing this accurately, but I</p> <p>21   think you explained that the ultimate decision on</p> <p>22   whether to deploy resources, that Main Justice could</p> <p>23   deploy, rested with department officials. Do I have</p> <p>24   that right?</p> <p>25           A.   The ultimate decision, yes.</p>



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<p style="text-align: right;">Page 102</p> <p>1 Q. And in the course of considering and</p> <p>2 making those decisions, did DOJ Main Justice officials</p> <p>3 consult with other federal agencies or components?</p> <p>4 A. Yes, I believe they did.</p> <p>5 Q. And you -- you testified shortly before</p> <p>6 the break about the draft of the October 10 joint</p> <p>7 statement. I think perhaps you refreshed your memory</p> <p>8 on -- on this a bit, and do you recall whether you</p> <p>9 sent a draft of that joint statement in advance of</p> <p>10 October 10 to anyone with the Corps of Engineers?</p> <p>11 A. Yes. Yeah. On further recollection,</p> <p>12 since I -- I drafted that particular version of the</p> <p>13 statement on -- on October 10, I was more involved in</p> <p>14 clearing the statement through the -- all the</p> <p>15 stakeholders who needed to look at it than I recalled</p> <p>16 previously. But, yes, I -- I sent it over to the</p> <p>17 Corps and Interior.</p> <p>18 Q. Fair to say that you, yourself, were</p> <p>19 closely involved with crafting both the September 9</p> <p>20 and the October 10 joint statements?</p> <p>21 A. Yes, I think that's fair to say.</p> <p>22 Q. And is that -- that kind of, quote, role</p> <p>23 with crafting those statements, is that typical in</p> <p>24 your role as a public affairs officer for Main</p> <p>25 Justice?</p>	<p style="text-align: right;">Page 104</p> <p>1 A. It would have been the same -- the same</p> <p>2 folks who were likely involved in the September 9.</p> <p>3 Q. And then do you recall about how far in</p> <p>4 advance of when it was released that you had engaged</p> <p>5 in this effort with the U.S. Army Corps to review it</p> <p>6 or approve it?</p> <p>7 A. I think it was all in the course of</p> <p>8 about 24 hours. I don't think that it was -- it</p> <p>9 was -- like the previous statement, it was on the eve</p> <p>10 of this expected decision.</p> <p>11 MR. KERLIN: Okay. That's all the</p> <p>12 questions I have for you.</p> <p>13 THE VIDEOGRAPHER: Okay. This</p> <p>14 concludes --</p> <p>15 MS. BOBET: Nothing further for the</p> <p>16 State.</p> <p>17 THE VIDEOGRAPHER: Okay. This concludes</p> <p>18 today's deposition of Wyn Hornbuckle. The time is</p> <p>19 6:39 p.m. UTC, 11:39 a.m. Mountain. We are off the</p> <p>20 record.</p> <p>21 (At 11:39 a.m. Mountain Standard Time</p> <p>22 the proceedings were not being videotaped.)</p> <p>23 (Discussion off the record.)</p> <p>24 MS. BOBET: Tracy, anything else you</p> <p>25 need from this witness before we let him go?</p>
<p style="text-align: right;">Page 103</p> <p>1 A. Yes, quite typical.</p> <p>2 MS. BOBET: Okay. Those were my</p> <p>3 follow-up questions. I'll turn you back to Mr. Kerlin</p> <p>4 if there's any redirect.</p> <p>5 EXAMINATION</p> <p>6 BY MR. KERLIN:</p> <p>7 Q. My only question would be -- is with</p> <p>8 respect to the October 10 statement, so I just want to</p> <p>9 make sure I understand. So now you're saying that you</p> <p>10 did send it to someone at U.S. Army Corps of Engineers</p> <p>11 before it was released?</p> <p>12 A. Yes. I think I -- I started to say that</p> <p>13 when we talked previously, is that because I was</p> <p>14 involved in clearing the statement and I -- I authored</p> <p>15 it, I was more involved in getting consensus around</p> <p>16 the -- the language than I was the first -- in the</p> <p>17 first iteration. So -- so, yeah, I shared it with --</p> <p>18 with the Corps and the Interior because they were</p> <p>19 coauthors on the statement.</p> <p>20 Q. Anyone in particular at the Corps that</p> <p>21 you were -- you recall working with on that?</p> <p>22 A. I don't recall exactly who.</p> <p>23 Q. Do you recall who --</p> <p>24 A. It would have been --</p> <p>25 Q. I'm sorry.</p>	<p style="text-align: right;">Page 105</p> <p>1 THE REPORTER: No.</p> <p>2 MS. BOBET: Okay. Well, thank you</p> <p>3 again, Wyn. We appreciate your time.</p> <p>4 (Discussion off the record.)</p> <p>5 THE REPORTER: I do need to get orders</p> <p>6 on the record.</p> <p>7 MS. BOBET: We will read and sign for</p> <p>8 any errata.</p> <p>9 THE REPORTER: And, Paul, are you</p> <p>10 ordering the transcript?</p> <p>11 MR. KERLIN: Yes. Our, just, usual</p> <p>12 order. Yeah, we get the same in all.</p> <p>13 THE REPORTER: And any hurry on the</p> <p>14 final? Any hurry on the timing of the transcript?</p> <p>15 MR. KERLIN: I don't think so. I think</p> <p>16 normal turnaround. What would that be, about ten</p> <p>17 days?</p> <p>18 THE REPORTER: Right now, this says</p> <p>19 January 2. I'm guessing it's because of the holidays,</p> <p>20 but that's the last date that you would get it by.</p> <p>21 MR. KERLIN: That sounds fine.</p> <p>22 THE REPORTER: Okay.</p> <p>23 MR. KERLIN: Thanks again.</p> <p>24 MS. BOBET: Thank you.</p> <p>25 WHEREUPON, the within proceedings were</p>

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<p style="text-align: right;">Page 106</p> <p>1 concluded at the approximate hour of 11:40 a.m.</p> <p>2 Mountain Standard Time on the 15th day of December,</p> <p>3 2022.</p> <p>4 * * * *</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 108</p> <p>1 REPORTER'S CERTIFICATE</p> <p>2 STATE OF COLORADO )</p> <p>3 ) ss.</p> <p>4 CITY AND COUNTY OF DENVER )</p> <p>5</p> <p>6 I, TRACY C. MASUGA, Registered</p> <p>7 Professional Reporter and Certified Realtime Reporter,</p> <p>8 do hereby certify that previous to the commencement of</p> <p>9 the examination, the said PATRICK WYNTERS "WYN"</p> <p>10 HORNBuckle was duly sworn or affirmed by me to testify</p> <p>11 to the truth in relation to the matters in controversy</p> <p>12 between the parties hereto; that the said deposition</p> <p>13 was taken in machine shorthand by me at the time and</p> <p>14 place aforesaid and was thereafter reduced to</p> <p>15 typewritten form; that the foregoing is a true</p> <p>16 transcript of the questions asked, testimony given,</p> <p>17 and proceedings had.</p> <p>18 I further certify that I am not employed</p> <p>19 by, related to, nor of counsel for any of the parties</p> <p>20 herein, nor otherwise interested in the outcome of</p> <p>21 this litigation.</p> <p>22</p> <p>23 IN WITNESS WHEREOF, I have affixed my</p> <p>24 signature this 3rd day of January, 2023.</p> <p>25</p> <p>____X____ Reading and Signing was requested.</p> <p>____ Reading and Signing was waived.</p> <p>____ Reading and Signing is not required.</p> <p><i>Tracy C. Masuga</i></p> <p>Tracy C. Masuga Registered Professional Reporter Certified Realtime Reporter</p>
<p style="text-align: right;">Page 107</p> <p>1 I, PATRICK WYNTERS "WYN" HORNBuckle, do</p> <p>2 hereby certify that I have read the above and</p> <p>3 foregoing deposition and that the same is a true and</p> <p>4 accurate transcription of my testimony, except for</p> <p>5 attached amendments, if any.</p> <p>6 Amendments attached ( ) Yes ( ) No</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 109</p> <p>1 Errata Sheet</p> <p>2</p> <p>3 NAME OF CASE: Plaintiff vs UNITED STATES</p> <p>4 DATE OF DEPOSITION: 12/15/2022</p> <p>5 NAME OF WITNESS: Patrick Wynters Hornbuckle</p> <p>6 Reason Codes:</p> <p>7 1. To clarify the record.</p> <p>8 2. To conform to the facts.</p> <p>9 3. To correct transcription errors.</p> <p>10 Page _____ Line _____ Reason _____</p> <p>11 From _____ to _____</p> <p>12 Page _____ Line _____ Reason _____</p> <p>13 From _____ to _____</p> <p>14 Page _____ Line _____ Reason _____</p> <p>15 From _____ to _____</p> <p>16 Page _____ Line _____ Reason _____</p> <p>17 From _____ to _____</p> <p>18 Page _____ Line _____ Reason _____</p> <p>19 From _____ to _____</p> <p>20 Page _____ Line _____ Reason _____</p> <p>21 From _____ to _____</p> <p>22 Page _____ Line _____ Reason _____</p> <p>23 From _____ to _____</p> <p>24</p> <p>25</p>